

WSR 12-04-021
PROPOSED RULES
OLYMPIC REGION
CLEAN AIR AGENCY
 [Filed January 25, 2012, 12:20 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) Regulations, Rule 1.4 Definitions, Rule 3.1 Annual Registration Fees, and Rule 4.4 Classification of Sources Required to Register with Agency.

Hearing Location(s): ORCAA, 2940 B Limited Lane N.W., Olympia, WA 98502, on April 11, 2012, at 10:00 a.m.

Date of Intended Adoption: April 11, 2012.

Submit Written Comments to: Robert Moody, 2940 B Limited Lane N.W., Olympia, WA 98502, e-mail robert.moody@orca.org, fax (360) 491-6308, by April 10, 2012.

Assistance for Persons with Disabilities: Contact Dan Nelson by April 4, 2012, (360) 539-7610.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will better align the revenue generated through the registration program with the expenses. Historically, the program has operated at a significant deficit. The proposed increase in fees will provide revenue for approximately eighty-five percent of the program expenses. Substantial changes were made to the form and content of Rule 3.1 Annual Registration Fees. Specific changes to the registration fee schedule include: Reducing the number of registration class categories from fifteen to five; increasing the emissions fee from \$20.00 per ton to \$50.00 per ton; requiring carbon monoxide emissions be included when calculating fees; and, adding a flat rate fee for inspections above the established inspection frequency. Changes made in ORCAA Rule 1.4 Definitions are minimal. Three definitions, "fee eligible generating equipment," "fee eligible stack," and "generating equipment" were deleted, as they are no longer used within ORCAA's rules. Changes made in ORCAA Rule 4.4 Classification of Sources Required to Register with Agency involved the description of the registration class categories. Those sources with a synthetic minor order were placed into Registration Class 1 (RC1). The criteria from the existing RC3 and RC4 were retained, though they were renumbered as RC2 and RC3, respectively. The smaller sources were condensed into RC4 and RC5.

Statutory Authority for Adoption: Chapter 70.94 RCW.
 Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Moody, 2940 B Limited Lane N.W., (360) 539-7610.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the Regulatory Fairness Act (chapter 19.85 RCW) because air pollution control authorities are not deemed state agencies (RCW 70.94.141).

A cost-benefit analysis is not required under RCW 34.05.328. Air pollution control authorities are not deemed to be state agencies (RCW 70.94.141).

January 25, 2012
 Francea L. McNair
 Executive Director

AMENDED SECTION

Rule 1.4 Definitions

When used in regulations of the Olympic Region Clean Air Agency, the following definitions shall apply, unless defined otherwise in individual Regulations:

"Actual Emissions" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with a through c of this rule.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Agency shall allow the use of a different time period upon determination that it is more representative of normal source rates, and types of materials processed, stored, or combusted during the selected time operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production period.

(b) The Agency may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For an emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

"Agency" shall mean the same as "Authority."

"Agricultural Operation" means the growing of crops, the raising of fowl or animals as gainful occupation.

"Air Contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

"Air Pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, property, or which unreasonably interferes with enjoyment of life and property. For the purpose of these Regulations, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

"Air Pollution Episode" means a period when a forecast, alert, warning, or emergency air pollution state is declared, as stated in chapter 173-435 WAC.

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 CFR part 60, 61, or 63;

(b) Any applicable state implementation plan emissions limitation including those with a future compliance date; or;

(c) The emissions rate specified as a federally enforceable permit condition, including those with future compliance date.

"Alteration" means the act of altering, which means to change or make different and includes any addition to or enlargement or replacement; or change of the design, capacity, process or arrangement; or any increase in the connected loading of equipment or control facility; or any change in fuels, method of operation or hours of operation not previously approved by the Agency through a Notice of Construction Approval, which would increase or adversely affect the kind or amount of air contaminant emitted by a stationary source.

"Ambient Air" means the surrounding outside air.

"Ambient Air Quality Standard" means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air, which shall not be exceeded.

"Ancillary" for the purpose of defining "stationary source" or "source," means "related."

"Approval Order" is defined in "order of approval."

"Attainment Area" means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

"Authority" means the Olympic Region Clean Air Agency. "Agency" shall mean the same as "Authority."

"Authorized Permitting Agent" means either the county, county fire marshal, fire districts, or county conservation district, provided an agreement has been signed with the local air pollution control agency or Department of Ecology.

"Begin Actual Construction" means, in general, initiation of physical on-site construction activities on an emission unit, which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities with mark the initiation of the change.

"Best Available Control Technology (BACT)" means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source which the permitting agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such stationary source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available control technology result in emissions of any pollutants which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60, Part 61, and Part 62. Emissions from any stationary

source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

"Board" means the Board of Directors of the Olympic Region Clean Air Agency.

"Bubble" means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and Rule 6.1.12 of Regulation 6.

"Commenced" as applied to "Construction" means that the owner or operator has all the necessary pre-construction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

For the purpose of this definition, "necessary pre-construction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

"Concealment" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

"Control Apparatus" means any device that prevents or controls the emission of any air contaminant.

"Control Officer" means the Air Pollution Control Officer of the Olympic Region Clean Air Agency. "Executive Director" means the same as "Control Officer."

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

"Criteria Pollutant" means a pollutant for which there is established a National Ambient Air Quality Standard at 40 CRF Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

"Daylight Hours" means the hours between official sunrise and official sunset.

"Ecology" means the Washington State Department of Ecology.

"Emission" means a release of air contaminants into the ambient air.

"Emission Point" means the location (place in horizontal plant and vertical elevation) at which an emission enters the atmosphere.

"Emission reduction credit (ERC)" means a credit granted pursuant to chapter 173-400 WAC. This is a voluntary reduction in emissions.

"Emission Standard" and "Emission Limitation" means requirements established under the Federal Clean Air

Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a stationary source to assure continuous emission reduction and any design, equipment work practice, or operational standard adopted under the Federal Clean Air Act, chapter 70.94 RCW.

"Emission Unit" means any part of a stationary source or source which emits or would have a potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70.94 or 70.98 RCW.

"EPA" means the United States Environmental Protection Agency (USEPA).

"Equipment" means any stationary or portable device, or any part thereof, capable of causing the emission of any air contaminant into the atmosphere.

"Establishment" means the act of establishing, which means creating, setting up, or putting into practice any equipment, material, fuel, or operational change.

"Excess Emission" means emissions of an air pollutant in excess of an applicable emission standard.

"Facility" means all emission units in the same industrial grouping located on contiguous or adjacent properties and under common ownership and control.

"Federal Clean Air Act (FCAA)" means the Federal Clean Air Act, as known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

"Federally Enforceable" means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or order of approval under a SIP approved new source review regulation, or any voluntary limits on emissions pursuant to Rule 6.1.12 or WAC 173-400-091.

~~("Fee Eligible Generating Equipment" means, for the purposes of calculating Rule 3.1 fees, any equipment or process capable of generating or emitting air contaminants except for the equipment and processes listed in a through g below:~~

~~(a) Gasoline or other fuel storage tanks located at dispensing facilities as defined in Rule 8.12.~~

~~(b) Storage tanks and other equipment located at dry cleaning facilities.~~

~~(c) Combustion units with less than 10 million BTUs per hour heat input.~~

~~(d) Process equipment with less than 5,000 ACFM flow rate.~~

~~(e) Paint spray booths and related paint spraying equipment.~~

~~(f) Mobile sources.~~

~~(g) Any other equipment or process determined appropriate for this exemption by the Agency.~~

~~"Fee Eligible Stack" means, for the purposes of calculating fees pursuant to Rule 3.1, any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct, except for the following:~~

~~(a) Emission points associated with gasoline or fuel dispensing stations.~~

~~(b) Emission points associated with dry cleaning facilities.~~

~~(c) Pipes or ducts equal to or less than six (6) inches in diameter.~~

~~(d) Any other emission point determined appropriate for this exemption by the Agency.)~~

"Fuel Burning Equipment" means any equipment, device or contrivance used for the burning of any fuel, and all appurtenances thereto, including ducts, breechings, control equipment, fuel feeding equipment, ash removal equipment, combustion controls, stacks, chimneys, etc., used for indirect heating in which the material being heated is not contacted by and adds no substances to the products of combustion.

"Fugitive Dust" means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

"Fugitive Emission" means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means refuse, animal or vegetable matter as from a kitchen, restaurant or store.

~~("Generating Equipment" means any equipment, device, process, or system that creates any air contaminant(s) or toxic air pollutant(s).)~~

"Good Engineering Practice (GEP)" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

"Hogged-fuel" means wood slabs, edging, trimmings, etc., which have been put through a "hog" to reduce them to a uniform small size, and also includes shavings from planing mills, sawdust from saw-kerfs, bits of bark, chips and other small recovered products from the manufacture of wood products or any combination thereof.

"Incinerator" means a furnace used primarily for the thermal destruction of waste.

"In Operation" means engaged in activity related to the primary design function of the source.

"Installation" means the act of installing, which means placing, assembling or constructing equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

"Light Detection and Ranging (LIDAR)" means the EPA alternate method 1 determination of the opacity of emissions from stationary sources remotely by LIDAR

"Lowest Achievable Emission Rate (LAER)" means for any stationary source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed new or modified stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation that is achieved in practice by such class or category of stationary source.

In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

"Major Modification" is defined depending on the attainment status of the area in which the project is located, or planned to be located, as follows:

(a) Nonattainment Areas. "Major Modification" as it applies in nonattainment areas means any physical change or change in method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(1) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(2) A physical change or change in method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule under section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which: The stationary source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit or approval order condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or the stationary source is approved to use under any major new source review permit or approval order issued under Rule 6.1.4(b) or WAC 173-400-112;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit or approval order condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation.

(vii) Any change in ownership at a stationary source.

(viii) The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2001) at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(A) When the permitting agency has reason to believe that the pollution control project would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that stationary source in the most recent air quality impact analysis in the area conducted for the purpose title I of the Federal Clean Air Act, if any; and

(B) The permitting agency determines that the increase will cause or contribute to a violation of any National Ambi-

ent Air Quality Standard or PSD increment, or visibility limitation.

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The SIP; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(b) Attainment or unclassified areas. "Major Modification" as it applies in attainment or unclassified areas means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(1) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The stationary source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition or approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or

(B) The stationary source is approved to use under any PSD permit;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition or an approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation.

(vii) Any change in ownership at a stationary source.

(viii) The addition, replacement, or use of pollution control project at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(A) When the permitting agency has reason to believe that the pollution control project (as defined in 40 CFR 51.166, in effect on July 1, 2001) would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that stationary source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Federal Clean Air Act, if any; and

(B) The permitting agency determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation.

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the SIP, and other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

"Major Stationary Source" is defined depending on the attainment status of the area in which the stationary source is located, or planned to be located as follows:

(a) Nonattainment areas. "Major Stationary Source" as it applies in nonattainment areas means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act, except that lower emissions thresholds shall apply as follows:

(i) 70 tons per year of PM₁₀ in any "serious" nonattainment area for PM₁₀.

(ii) 50 tons per year of carbon monoxide in any "serious" nonattainment area for carbon monoxide where stationary sources contribute significantly to carbon monoxide levels in the area.

(2) Any physical change that would occur at a stationary source not qualifying under (b)(1) of this rule as a major stationary source, if the change would constitute a major stationary source by itself.

(3) A major stationary source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

(4) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the stationary source belongs to one of the following categories of stationary sources or the stationary source is a major stationary source due to (b)(1)(i) or (b)(1)(ii) of this rule:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;

(xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(xxvii) Any other stationary source category, which, as of August 7, 1980, is being regulated under section 111 of 113 of the Federal Clean Air Act.

(5) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, FACILITY, or installation" means all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or person under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, as amended.

(b) Attainment or unclassified areas. "Major Stationary Source" as it applies in attainment or unclassified areas means:

(1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act:

(i) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;

(ii) Coal cleaning plants (with thermal dryers);

(iii) Kraft pulp mills;

(iv) Portland cement plants;

(v) Primary zinc smelters;

(vi) Iron and steel mill plants;

(vii) Primary aluminum ore reduction plants;

(viii) Primary copper smelters;

(ix) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(x) Hydrofluoric, sulfuric, and nitric acid plants;

(xi) Petroleum refineries;

(xii) Lime plants;

(xiii) Phosphate rock processing plants;

(xiv) Coke oven batteries;

(xv) Sulfur recovery plants;

(xvi) Carbon black plants (furnace process);

(xvii) Primary lead smelters;

(xviii) Fuel conversion plants;

(xix) Sintering Plants;

(xx) Secondary metal production plants;

(xxi) Chemical process plants;

(xxii) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;

(xxiii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiv) Taconite ore processing plants;

(xxv) Glass fiber processing plants; and

(xxvi) Charcoal production plants.

(2) Regardless of the stationary source size specified in (b)(1) of this rule, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Federal Clean Air Act; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under (b)(1) or (b)(2) of this rule, as a major stationary source if the change would constitute a major stationary source by itself.

(4) A major stationary source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills'

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category, which, as of August 7, 1980, is being, regulated under section 111 or 112 of the Federal Clean Air Act.

(6) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, facility, or installation" means all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be con-

sidered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended.

"**Masking**" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

"**Material Handling**" means the handling, transporting, loading, unloading, storage, and transfer of material with no significant chemical or physical alteration.

"**Modification**" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such stationary source or that result in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

"**National Ambient Air Quality Standards (NAAQS)**" means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

"**National Emission Standards for Hazardous Air Pollutants (NESHAP)**" means the federal rules in 40 CFR Part 61.

"**National Emission Standards for Hazardous Air Pollutants for Source Categories**" means the federal rules in 40 CFR Part 63.

"**Net Emissions Increase**" is defined depending on the attainment status of the area in which the new stationary source or modification is located, or planned to be located, as follows:

(a) Nonattainment areas. "Net Emissions Increase" as it applies in nonattainment areas means:

(1) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emissions at the stationary source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(ii) The permitting agency has not relied on it in issuing any permit or order of approval for the stationary source under this rule or a previous SIP approved nonattainment area new source review regulation, which order or permit is

in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) It has approximately the same qualitative significance to the increase from the particular change; and

(iv) The permitting agency has not relied on it in issuing any permit or order of approval under this rule or a SIP approved nonattainment area new source review regulation; or the permitting agency has not relied on it in demonstrating attainment or reasonable further progress.

(6) An increase that results from a physical change at a stationary source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

(b) Attainment or unclassified areas. "Net Emissions Increase" as it applies in attainment or unclassified areas means:

(1) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emission at the stationary source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within five years before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if ecology or EPA has not relied on it in issuing a PSD permit for the stationary source, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM_{10} emissions can be used to evaluate the net emissions increase for PM_{10} .

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a stationary source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operationally only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

"New Source" means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such stationary source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new stationary source under the Federal Clean Air Act.

"New Source Performance Standards (NSPS)" means the federal rules set forth in 40 CFR Part 60.

"Nonattainment Area" means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a national ambient air quality standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

"Nonroad Engine" means:

(a) Except as discussed in (b) of this rule, a nonroad engine is any internal combustion engine:

(1) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(2) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(3) 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.

(b) 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 or 112 of the Federal Clean Air Act; or

(3) The engine otherwise included in (a)(3) of this rule 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 a 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 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 operates at a single location approximately three months (or more) each year. The paragraph does not apply to an engine after the engine is removed from the location.

"Notice of Construction Application" means a written application to permit construction, installation or establishment of a new stationary source, modification of an existing stationary source, or replacement or substantial alteration of control technology at an existing stationary source.

"Nuisance" means an emission that unreasonably interferes with the use and enjoyment of property.

"Olympic Air Pollution Control Authority (OAPCA)" is the former name of Olympic Region Clean Air Agency (ORCAA). Reference to "OAPCA" shall mean ORCAA.

"Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage.

"Order" means any order issued by ecology or a local air agency pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.211, 70.94.152, 70.94.153, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

"Order of Approval" or "Approval Order" means a regulatory order issued by Ecology of the Agency to approve the Notice of Construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

"Owner" means person, agent, lessor, lessee, possessor, manager, supervisor, operator, or other responsible party of real property or other assets which includes equipment or control apparatus.

"Ozone Depleting Substance" means any substance listed in Appendices A and B to Subpart A of 40 CFR part 82.

"Particulate Matter" or "Particulates" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"Parts Per Million (ppm)" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

"Permit" means a written warrant or license granted by the Board, Control Officer, or duly authorized Representative or Agent.

"Permitting Agency" means ecology or the local air pollution control agency with jurisdiction over the source.

"Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality or government agency.

"PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

"PM₁₀ Emissions" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

"Potential to Emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

"Prevention of Significant Deterioration (PSD)" means the program in WAC 173-400-141. Ecology is responsible for the PSD program for stationary sources in ORCAA's jurisdiction. Contact Ecology at (360) 407-6800 for more information.

"Process" means any equipment, device apparatus, chemical, natural element, procedure, effort, or any combination thereof which performs a service, function, use, or method, leading to an end of a particular performance, or manufacturing production.

"Reasonably Available Control Technology (RACT)" means the lowest emission limit that a particular stationary source or stationary source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual stationary source or stationary source category taking into account the impact of the stationary source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any stationary source or stationary source category shall be adopted only after notice and opportunity for comment are afforded.

"Refuse" means waste as defined in Rule 1.4 of this Regulation.

"Regulation" means any regulation, or any subsequently adopted additions or amendments thereto, of the Olympic Region Clean Air Agency.

"Regulatory Order" means an order issued by Ecology or an Agency to an air contaminant source that applies to that source, any applicable provision of chapter 70.94 RCW, or the rules adopted there under, or, for sources regulated by a local air agency, the regulations of that agency.

"Representative" or "Agent" means any person authorized by the Control Officer of the Agency to represent him in an official and specific manner.

"Residential" means a two or single-family unit.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains located at the new modified stationary source; and,

(b) Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

"Significant" is defined depending on the attainment status of the area:

(a) Nonattainment areas. "Significant" as it applies in nonattainment areas means, in reference to a net emissions increase or the stationary source's potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Volatile organic compounds:	40 tpy
Lead:	0.6 tpy
PM-10:	15 tpy

(b) Attainment or unclassified areas. "Significant" as it applies in attainment or unclassified areas means:

(1) In reference to a net emissions increase or the stationary source's potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter (PM)	25 tpy of PM emissions 15 tpy of PM-10 emissions
Volatile organic compounds	40 tpy
Fluorides	3 tpy
Lead	0.6 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2 grams per year (0.112 oz. per year or 49 grains per year)

Pollutant and Emissions Rate	
Municipal waste combustor metals (measured as particulate matter)	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 megagrams per year (40 tpy)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	45 megagrams per year (50 tpy)
Ozone-depleting substances (in effect on July 1, 2000)	100 tpy

(2) In reference to a new emissions increase or the stationary source's potential to emit a pollutant subject to regulation under the Federal Clean Air Act that the definition in (b)(1) of this rule does not list, any emissions rate. However, for purposes of the applicability of this rule, the hazardous air pollutants listed under section 112(b) of the Federal Clean Air Act, including the hazardous air pollutants that may have been added to the list, are not considered subject to regulation.

(3) Regardless of the definition in (b)(1) of this rule, significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or great than 1 microgram per cubic meter (twenty four hour average).

"Source" means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same Major Group (i.e., which have the same two digit code) as describe in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

"Source Category" means all sources of the same type of classification.

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

"Stack Height" means the height of an emission point measured from the ground-level elevation at the base of the stack.

"Standard Conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

"Standard Cubic Foot of Gas" means that amount of the gas, which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor and at standard conditions.

"State Act" means the Washington Clean Air Act, chapter 70.94 RCW, as amended.

"**State Implementation Plan (SIP)**" or the "Washington SIP" in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

"**Stationary Source**" means any building, structure, facility, or installation, which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216(11) of the Federal Clean Air Act.

"**Synthetic Minor**" means any stationary source that's potential to emit has been limited below applicable thresholds by means of a federally enforceable order, rule, or permit condition.

"**Temporary**" means a period of time not to exceed one (1) year.

"**Total Reduced Sulfur (TRS)**" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 or an approved equivalent method and expressed as hydrogen sulfide.

"**Total Suspended Particulate (TSP)**" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

"**Toxic Air Pollutant (TAP)**" or "Toxic Air Contaminant" means any Class A or Class B toxic air pollutant listed in WAC 173-460-150 and WAC 173-460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/or WAC 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes or compounds.

"**True Vapor Pressure**" means the equilibrium partial pressure exerted by the stored organic compound at:

(a) The annual average temperature of the organic compound as stored; or

(b) At the local annual average temperature as reported by the National Weather Service if stored at ambient temperature.

"**Unclassifiable Area**" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant that is listed by EPA at 40 CFR part 81.

"**United States Environmental Protection Agency (USEPA)**" shall be referred to as EPA.

"**Vent**" means any opening through which gaseous emissions are exhausted into the ambient air.

"**Volatile Organic Compound (VOC)**" means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC:

Acetone;
carbon monoxide;
carbon dioxide;
carbonic acid;

metallic carbides or carbonates;
ammonium carbonate;
dimethyl carbonate;
propylene carbonate;
methane;
ethane;
methylene chloride (dichloromethane);
1,1,1-trichloroethane (methyl chloroform);
1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113);
trichlorofluoromethane (CFC-11);
dichlorodifluoromethane (CFC-12);
chlorodifluoromethane (HCFC-22);
trifluoromethane (HFC-23);
1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);
chloropentafluoroethane (CFC-115);
1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
1,1,1,2-tetrafluoroethane (HCFC-134a);
1,1-dichloro 1-fluoroethane (HCFC-141b);
1-chloro 1,1-difluoroethane (HCFC-142b);
2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124);
pentafluoroethane (HFC-125);
1,1,2,2-tetrafluoroethane (HFC-134);
1,1,1-trifluoroethane (HFC-143a);
1,1-difluoroethane (HFC-152a);
parachlorobenzotrifluoride (PCBTF);
cyclic, branched, or linear completely methylated siloxanes;
perchloroethylene (tetrachloroethylene);
3,3-dichloro 1,1,1,2,2-pentafluoropropane (HCFC-225ca);
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
1,1,1,2,3,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
difluoromethane (HFC-32);
ethylfluoride (HFC-161);
1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
1,1,2,2,3-pentafluoropropane (HFC-254ca);
1,1,2,3,3-pentafluoropropane (HFC-245ea);
1,1,1,2,3-pentafluoropropane (HFC-245eb);
1,1,1,3,3-pentafluoropropane (HFC-245fa);
1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
1,1,1,3,3-pentafluorobutane (HFC-365mfc);
chlorofluoromethane (HCFC-31);
1-chloro-1-fluoroethane (HCFC-151a);
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃);
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃);
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅);
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂(CF₂OC₂H₅));
methyl acetate and perfluorocarbon compounds which fall into these classes:
(i) Cyclic, branched, or linear completely fluorinated alkanes;
(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the Agency, or EPA.

(c) As a precondition to excluding these negligibly reactive compounds as VOC or at any time thereafter, ecology or the Agency may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Agency, the amount of negligibly reactive compounds in the source's emissions.

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

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

AMENDED SECTION

Rule 3.1 Annual Registration Fees

(a) The Agency shall charge Initial and Annual registration fees pursuant to RCW 70.94.151. Annual registration fees shall be assessed according to the annual fee schedules set forth in Rule 3.1(b) below. Initial registration fees shall be assessed upon initial registration of a source (~~subject to registration~~) and shall equal the annual registration fee based on projected emissions and prorated for the remaining months in the fiscal year. Initial and Annual registration fees shall provide revenue to fund the Agency's ongoing Registration Program.

(b) All sources requiring registration shall be assessed an annual registration fee; the fees required by this rule shall be based on process rates, equipment specifications, and emissions data from the previous calendar year on file with the Agency, provided that, if this information is not on file with the Agency, the Agency may base the annual fee on the enforceable emissions limitations for the source and maximum capacities and production rates. For purposes of assessing annual registration fees, the Agency shall consider updates and revisions to any source's file received prior to July 1 of the current year. ((consisting of the sum of a "source fee," "generating equipment fee," "stack fee," "class fee," "emissions fee," and "source specific monitoring fee")) The fees shall be assessed according to items (1) and ~~((through (9))~~(2) of this rule, ~~((and amounts as specified in Table 3.1a.))~~ Sources assessed annual operating permit fees under Rule 3.2 shall not be assessed annual fees under this rule.

~~((1) Source fee—All sources requiring registration shall pay an annual "source fee" of an amount as indicated in Table 3.1a; and~~

~~(2) A Generating Equipment Fee of an amount as indicated in Table 3.1a for each fee eligible generating equipment located at the source; and~~

~~(3) A Stack Fee of an amount as indicated in Table 3.1a for each fee eligible stack located at the source; and~~

~~(4))~~ (1) An Emissions Fee of an amount as indicated in Table 3.1a per ton of each air contaminant listed in Table 3.1b that is emitted by the source. ((for air contaminant emitted in excess of 5 tons, evaluated on a pollutant by pollutant basis;)) The emissions fee shall be based on actual emissions from the source, for the last calendar year when available, ((during the previous calendar year;)) or as ((contained)) specified in the file or permit. Only non-VOC TAPs will be subject to the emission fee; and

~~((5))~~ (2) A Registration Class Fee of an amount as specified in Table 3.1a. ~~((; and~~

~~(6) A Source Specific Monitoring Fee of an amount as specified in Table 3.1a if ambient monitoring is a requirement for the source;~~

~~(7) The Agency shall assess the emissions fee based on actual emissions from the source for the last calendar year when available.~~

~~(8) The annual registration fees required by this rule shall be based on process rates, equipment specifications, and emissions data from the previous calendar year on file with the Agency. For purposes of assessing annual registration fees, the Agency shall consider updates and revisions to any source's file, received prior to July 1 of the current year. If process rates, equipment specifications, and emissions data from the previous calendar year is not on file with the Agency, the Agency may base the annual fee on the enforceable emissions limitations for the source and maximum capacities and production rates.~~

~~(9) For purposes of assessing annual registration fees, definitions for "fee eligible generating equipment" and "fee eligible stack" shall be consistent with the definitions in Rule 1.4, and fee eligible generating equipment and fee eligible stacks which are identical in size, capacity, function, and emissions may be counted as one unit as approved by the Agency;))~~

(c) The Agency shall assess annual registration fees after August 1 of each year to cover the cost of administering the program for the current fiscal year commencing July 1 and ending June 30. The agency shall assess annual registration fees based on the most recent information on file with the Agency including any updates to the source's file received prior to July 1 of that year.

(d) Upon assessment by the Agency, annual registration fees are due and payable and shall be deemed delinquent if not fully paid within thirty (30) days. However, sources classified as RC1, ~~((or))~~ RC2, or RC3 shall be given the option to pay their annual fee in quarterly installments. RC1, ~~((and))~~ RC2, and RC3 sources may choose to pay their annual fees in quarterly installments by indicating so on the first invoice received and remitting payment of the first installment to the Agency along with the duplicate copy of the invoice. Quarterly installments shall be equal to 25% of the total annual registration fee and shall be due within 30 days of each quarter following initial assessment by the Agency.

(e) Any source which fails to pay, in full, their annual registration fee or annual registration installment by the due date, as stated on the invoice, shall be assessed a late penalty in the amount of 25% of their annual registration fee. This late penalty shall be in addition to the annual registration fee.

(f) Annual registration fees may be appealed according to the procedure specified in Rule 1.8.

(g) Failure to pay annual registration fees is a violation of these Regulations and will result in the issuance of a Notice of Violation and prescribed penalties.

(h) On an annual basis, the Agency shall conduct a workload analysis to determine the adequacy of annual registration fees in funding the Agency's Registration Program. The workload analysis shall be based on the Agency's historical record of time and resource expenditures associated with the registration program. The workload analysis shall be presented to the Board at least every two years (~~made available if a request is made to the Agency~~). Any proposed revisions to the annual registration fee schedule shall be presented to the Board for adoption after public noticing pursuant to these Regulations public noticing requirements and opportunity for a public hearing.

(i) All registered sources needing to be re-inspected, due to verified conditions or actions caused by the source, will be charged an additional flat rate of \$100.00 per re-inspection.

((ANNUAL-FEE-COMPONENT	FEE COMPONENT DESCRIPTION	FEE-AMOUNT
RC8	Incinerators < 30 tpy emissions	\$210.00
RC9	Potential odor sources.	\$400.00
RC10	Maj. gasoline terminals & bulk plants	\$500.00
RC11	Min. gasoline terminals & bulk plants	\$200.00
RC12	Gas stations requiring Stage II	\$20.00
RC13	Gas stations	\$0
RC14	VACANT CLASSIFICATION	
RC15	Other sources requiring registration	\$100.00
Source Specific Ambient Air Monitoring Fees	Fees charged a source for ORCAA to establish and operate a special purpose source specific monitoring station would be determined on a case-by-case basis when such monitoring is required.	Variable))

Table 3.1a: Annual Registration Fees (RC)

((ANNUAL-FEE-COMPONENT	FEE COMPONENT DESCRIPTION	FEE-AMOUNT
Facility Fee	Fee assessed to all sources requiring registration.	\$135.00
Generating-Equip Fee	Fee assessed per each fee-eligible generating equipment located at the source.	\$45.00
Stack Fee	Fee assessed per each fee-eligible stack located at the source.	\$30.00
Emissions Fee	Fee assessed per ton of particulate matter, SO ₂ , NO _x , VOC, and toxic air contaminants emissions which exceeded 5 tons per year for the previous calendar year based on actual emissions.	\$20.00
Class Fees:		
RC1	Major sources (≥100 tpy)	\$1600.00
RC2	Major toxic sources	\$1600.00
RC3	Criteria pollutants ≥ 30 tpy	\$800.00
RC4	Criteria pollutants ≥ 10 tpy	\$250.00
RC5	Criteria pollutant < 10 tpy	\$50.00
RC6	Toxic air contaminants < 10 tpy	\$200.00
RC7	<100 gal/mo VOC containing materials	\$50.00

<u>Registration Class (RC)</u>	<u>Registration Class Fee Amount</u>	<u>Emission Fee</u>
RC1	\$1625.00	\$50.00 per ton
RC2	\$1450.00	\$50.00 per ton
RC3	\$1300.00	\$50.00 per ton
RC4	\$600.00	N/A
RC5	\$240.00	N/A

Table 3.1b: Pollutants Considered For Fees

Total Suspended Particulates (TSP)
Carbon Monoxide (CO)
Sulfur Oxides (SO _x)
Nitrogen Oxides (NO _x)
Volatile Organic Compounds (VOC)
Toxic Air Pollutants (TAP)

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

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

AMENDED SECTION

Rule 4.4 Classification of Sources Required to Register with Agency

All sources requiring registration pursuant to Rule 4.1 shall be classified in one of the registration classes listed in Table 4.4b. A source will be placed in the most appropriate class as determined by the Agency. For purposes of classification, the pollutants listed in Table 4.4a will be considered.

Table 4.4a: Pollutants

Total <u>Suspended</u> Particulates (TSP)
Sulfur Oxides (SOx)
Nitrogen Oxides (NOx)
Volatile Organic Compounds (VOC)
Carbon Monoxide (CO)
Toxic Air Pollutants (<u>TAP</u>)

Table 4.4b: Registration Classes (RC)

CLASS RC1 - Any source ((with a potential to emit 100 tons per year or more of any pollutant listed in Table 4.4a.)) <u>that has an effective Synthetic Minor Order issued pursuant to WAC 173-400-091.</u>
CLASS RC2 - Any source((, except those sources classifiable under RC1,)) with a potential to emit ((+0)) <u>30</u> tons or more per year of any <u>combination of</u> ((toxic air)) pollutants (((or 25 tons or more per year of any combination of toxic air pollutants))) <u>listed in Table 4.4a.</u>
CLASS RC3 - Any source((, except those sources classifiable under RC1 or RC2,)) with a potential to emit ((30)) <u>10</u> tons <u>or more</u> per year (((or more))) of any <u>combination of</u> pollutants <u>listed in Table 4.4a.</u>
CLASS RC4 - Any source((, except those sources classifiable under RC6, RC8, or RC10, RC11, RC12, or RC13),) with a potential to emit ((at least 10)) <u>5</u> tons <u>or more</u> per year ((, but not more than 30 tons per year,)) of any <u>combination of</u> pollutants <u>listed in Table 4.4a.</u>
CLASS RC5 - Any source((, except those sources classifiable under RC7, RC8, RC9, RC10, RC11, RC12, or RC13,)) with a potential to emit less than ((+0)) <u>5</u> tons per year of any <u>combination of</u> pollutants <u>listed in Table 4.4a.</u>
((CLASS RC6 - Any source, except those sources classifiable as RC1, RC2, RC3, RC7, RC8, RC10, RC11, RC12, or RC13, with a potential to emit at least 5 tons per year, but not more than 10 tons per year, of any combination of toxic air pollutants.
CLASS RC7 - Any source, except those sources classifiable as RC1, RC2, RC3, RC4, RC8, RC10, RC11, RC12, or RC13, that uses or projects to use an average of less than 100 gallons per month (annual average) of materials containing volatile organic compounds, or with a maximum potential to emit less than 5 tons per year of any combination of toxic air pollutants.

CLASS RC8 - All incinerators not classified as RC1, or RC2.
CLASS RC9 - Any air contaminant sources, not classifiable in any other RC classification, which has an actual or potential odor problem associated with its operation.
CLASS RC10 - Any gasoline terminal or bulk plant, except those terminals or bulk plants classifiable under RC1 or RC2 whose gasoline throughput was greater than 7.2 million gallons for the previous calendar year.
CLASS RC11 (minor gasoline terminals and bulk plants) - Any gasoline terminal or bulk plant, except those terminals or bulk plants classifiable under RC1 or RC2, whose gasoline throughput was equal to or less than 7.2 million gallons for the previous calendar year.
CLASS RC12 (gasoline stations, Stage II) - Any gasoline dispensing facility requiring Stage II vapor recovery.
CLASS RC13 (gasoline stations, general) - Any gasoline dispensing facility with total gasoline throughput of greater than 100 thousand gallons during the previous calendar year.
CLASS RC14 - vacant classification
CLASS RC15 - Any air contaminant sources, which are unique and because of special circumstances cannot be adequately classified elsewhere.))

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

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

**WSR 12-05-007
PROPOSED RULES
SOUTH PUGET SOUND
COMMUNITY COLLEGE**
[Filed February 3, 2012, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-128.

Title of Rule and Other Identifying Information: Chapter 132X-30 WAC, Use of college facilities.

Hearing Location(s): Hawks Prairie Center, Room 118, 1401 Marvin Road N.E., Suite 200, Lacey, WA 98516, on April 12, 2012, at 3:15 p.m.

Date of Intended Adoption: April 13, 2012.

Submit Written Comments to: Diana Toledo, South Puget Sound Community College, 2011 Mottman Road S.W., Olympia, WA 98512-6292, e-mail dtoledo@spsec.ctc.edu, fax (360) 586-3570, by April 5, 2012.

Assistance for Persons with Disabilities: Contact Diana Toledo by April 5, 2012, TTY (360) 596-5439.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 132X-30 WAC for inclusion of new language to update and clarify

guidelines and procedural changes, as recommended by the attorney general's office.

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

Statutory Authority for Adoption: RCW 28B.50.140.

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, Implementation and Enforcement: President's staff (vice-presidents), Building 25, 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.

February 3, 2012

Gerald Pumphrey

College President

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 guidelines and procedures.

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

WAC 132X-30-020 ((Administrative control.)) Definitions. ~~((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) "College groups" shall mean individuals who are currently enrolled students or current employees of South Puget Sound Community College or who are affiliated with a recognized student organization or a recognized employee group of the college.

(2) "College facilities" include all buildings, structures, grounds, office spaces and parking lots.

(3) "Limited public forum areas" means those areas of each campus that the college has chosen to open as places for expressive activities protected by the first amendment, subject to reasonable time, place or manner restrictions.

(4) "First amendment activities" include, but are not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

(5) "Noncollege groups" shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of South Puget Sound Community College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

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

WAC 132X-30-030 ((Trespass regulations.)) Statement of purpose. ~~((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.)~~ South Puget Sound Community College district is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's facilities and grounds are dedicated. Accordingly, the college is a designated public forum opened for the limited purposes recited herein and further subject to the time, place, and manner limitations and restrictions set forth in this rule.

The purpose of the time, place and manner regulations set forth in this rule is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

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

WAC 132X-30-040 ((Scheduling-)) Use of facilities for first amendment activities. ~~((The administrative regulations and procedures, schedule of fees, and application forms for use may be obtained at the office of the vice president for administrative services or the college facilities rental coordinator. The scheduling of facilities by groups or organizations will be through these offices.))~~ (1) Subject to the regulations and requirements of this rule, both college and noncollege groups may use the campus limited forum areas for first amendment activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(3) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

(4) College groups are encouraged to notify the campus security department no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.

(5) College group events shall not last longer than eight hours from beginning to end.

(6) All sites used for first amendment activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

(7) All fire, safety, sanitation or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this rule.

(8) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

(9) The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

(10) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(11) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

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

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

(12) The event must also be conducted in accordance with any other applicable college rules and regulations, college, local ordinances and state or federal laws.

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

WAC 132X-30-050 ((Users-)) Additional requirements for noncollege groups. ~~((In order to assure appropriate scheduling of college facilities, the following priorities will serve as guidelines:~~

(1) College scheduled programs and activities.

(2) College related activities, recognized college organizations, and those public or private agencies, whose purpose relate to the advancement of college programs, and/or sponsored activities.

(3) ~~Nonprofit organizations that are nonsectarian, non-political, and noncommercial:~~

(a) ~~Public education groups that would be engaging in activities serving public education goals and objectives; and~~

(b) ~~Other than public education groups or organizations;~~

(i) ~~That would be engaging in activities that serve governmentally supported objectives; or~~

(ii) ~~That would be engaging in activities related to community improvement objectives; or~~

(iii) ~~That would be engaging in activities related to the organization's goals and objectives.~~

(4) ~~Private organizations and those organizations of a religious or sectarian, political or commercial nature requesting facilities on an emergency basis.~~

(5) ~~Other organizations or groups.))~~ (1) College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities administrative guidelines and procedures. Noncollege groups may otherwise use college facilities as identified in this rule.

(2) The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for first amendment activities on campus:

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

(b) The outside area between buildings 27, 28, and 22, excluding the covered walkway.

(3) Noncollege groups that seek to use the campus limited forums to engage in first amendment activities shall provide notice to campus security no later than forty-eight hours prior to the event along with the following information:

(a) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and

(b) The name, address and telephone number of a contact person for the sponsoring organization; and

(c) The date, time and requested location of the event; and

(d) The nature and purpose of the event; and

(e) The type of sound amplification devices to be used in connection with the event, if any; and

(f) The estimated number of people expected to participate in the event.

(4) Noncollege group events shall not last longer than five hours from beginning to end.

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

WAC 132X-30-060 ((Limitations of use-)) Distribution of materials. ((1) ~~College facilities may not be used in ways which interfere with or are detrimental to the college's own instructional and educational programs.~~

(2) ~~College facilities may not be used for commercial sales, advertising, or promotional activities except when such activities serve educational purposes of the college and are conducted under the sponsorship of a college department or office.~~

(3) ~~Each group or organization which uses college facilities must abide by the regulations and procedure of use as determined by the board of trustees and/or the president and shall be subject to revocation of their privilege to use the facilities for failing to do so.~~

(4) ~~The administration reserves the right to deny or cancel the use of facilities when such use or meeting may in any way be prejudicial to the best interests of the college.))~~ Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site designated for noncollege groups.

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

WAC 132X-30-070 ((Fees-)) Criminal trespass. ((Fees, when applicable, will be determined by the following categories and assessed accordingly:

(1) ~~Direct charges: Will include charges for utilities (heat, light, etc.) and custodial services.~~

(2) ~~Special charges: Will include charges for use of audio-visual or television equipment and operator; for campus security services, and/or any other similar kind of expenses incurred.~~

(3) ~~Rental charges: Will include charges (depreciation, overhead costs, amortization, etc.) for use of facilities.~~

(4) ~~Damage charges: Will include charges to defray any expense for the repair or replacement of damaged property or equipment incurred as a result of a rental agreement.))~~ Any person determined to be violating these regulations is subject to an order from the college campus security to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.

NEW SECTION

WAC 132X-30-080 Posting of a bond and hold harmless statement. When using college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use rule.

When the college grants permission to a college group or noncollege group to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

NEW SECTION

WAC 132X-30-090 Trespass. (1) Noncollege groups who violate these regulations will be advised of the specific nature of the violation, and if they persist in the violation, will be requested by the campus president or designee to leave the college property. Such a request will be deemed to withdraw

the license or privilege to enter onto or remain upon any portion of the college facilities of the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW or municipal ordinance.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with established college rules.

(3) Persons who violate a district rule may have their license or privilege to be on district property revoked and be ordered to withdraw from and refrain from entering upon any district property. Remaining on or reentering district property after one's license or privilege to be on district property has been revoked, shall constitute trespass and such individual shall be subject to arrest for criminal trespass.

WSR 12-05-008
PROPOSED RULES
OLYMPIC COLLEGE
[Filed February 3, 2012, 2:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-23-165.

Title of Rule and Other Identifying Information: Olympic College nondiscrimination policy.

Hearing Location(s): Olympic College Board Room, Humanities and Student Services Building, Room 219-121, 1600 Chester Avenue, Bremerton, WA 98337, on March 29, 2012, at 10:00 a.m.

Date of Intended Adoption: March 29, 2012.

Submit Written Comments to: Thomas Oliver, Olympic College, CSC 210, 1600 Chester Avenue, Bremerton, WA 98337, e-mail toliver@olympic.edu, fax (360) 475-7505, by March 22, 2012.

Assistance for Persons with Disabilities: Contact Karen Fusco by March 22, 2012, TTY (360) 475-7543 or (360) 457-7542.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is an update of the current policy to show adherence to the Genetic Information Nondiscrimination Act of 2008.

Reasons Supporting Proposal: Nondiscrimination policies are required for all colleges under the state board for community and technical colleges. This is an update of the existing policy providing modern language.

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

Statute Being Implemented: Chapter 28B.50 RCW.

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

Name of Proponent: Linda Yerger, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Linda Yerger, CSC 524, 1600 Chester Avenue, Bremerton, WA 98337, (360) 475-7305.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There will be no impact on any entity other than Olympic College.

A cost-benefit analysis is not required under RCW 34.05.328. There is no significant economic impact.

February 3, 2012

Thomas Oliver

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-19-026, filed 9/9/10, effective 10/10/10)

WAC 132C-10-160 Nondiscrimination policy. (1) Intent. The Olympic College board of trustees herein affirms its policy of equal opportunity to all individuals and all the communities we serve. Olympic College is committed to the principle of equal opportunity in all matters relating to employment, college-sponsored activities, and education programs and will comply with all applicable laws prohibiting discrimination including Titles VII and IX of the Civil Rights Act of 1964, and amendments; the Age Discrimination in Employment Act of 1967; section 504 of the Rehabilitation Act of 1974; the Americans with Disabilities Act of 1990; the Genetic Information Nondiscrimination Act of 2008; and the Washington state laws against discrimination, chapter 49.60 RCW.

(2) Policy. Olympic College is committed to the principle of equal opportunity in education and employment. Harassment and/or discrimination directed toward any individual or group on the basis of race, creed, color, national origin, sex, genetic information, honorably discharged veteran or military status, age, religious preference, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, status as a disabled or Vietnam-era veteran, or political opinions or affiliations, or any other population designated by statute is a violation of the mission and purpose of Olympic College and will not be tolerated. The college is committed to preventing and stopping discrimination, including harassment, on any of these unlawful bases, and any associated retaliatory behavior. All employees and students shall be allowed to work and learn in an environment free from discrimination.

(a) This policy is based on the principle that all forms of harassment and/or discrimination are unacceptable and will be dealt with promptly and effectively. Students, faculty or staff who are determined to have violated this policy (following investigatory proceedings) are subject to disciplinary action up to and including termination of employment and permanent dismissal (students).

(b) Applicants for admission or employment or any employees, students, or participants in college activities or programs who believe that they have been discriminated against may pursue an institutional complaint and/or may pursue other remedies provided by law.

(c) Administrators, supervisors and faculty members shall assist in ensuring that no retaliation occurs against persons who make complaints, persons who are complained against or persons who are involved in the investigation of complaints.

(3) Responsibility.

(a) The president of the college, and all administrative employees shall have ultimate responsibility for overseeing compliance with this policy at his or her respective unit of the college.

(b) In addition, each vice-president, executive officer, administrative officer, faculty member or other person with supervisory responsibility shall be required to report any complaint of discrimination, sexual harassment, or any harassment that violates this policy.

(c) All members of the college community are required to cooperate in any investigation of the discrimination/harassment complaint.

(4) Complaint procedure. Persons who believe that they have been the subject of unlawful discrimination or harassment are encouraged to bring such issues to the attention of their supervisor, instructor, or human resource services, or follow the established complaint procedures.

WSR 12-05-020**WITHDRAWAL OF PROPOSED RULES
UNIVERSITY OF WASHINGTON**

[Filed February 7, 2012, 11:22 a.m.]

The University of Washington withdraws the proposed rules for chapter 478-156 WAC, Rules for the University of Washington residence halls and family housing apartments, filed as WSR 11-23-139, pending additional review. Questions may be directed to Rebecca Goodwin Dearnorff, UW director of rules coordination at rules@uw.edu.

WSR 12-05-023**PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed February 7, 2012, 12:32 p.m.]

Supplemental Notice to WSR 11-22-032.

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: Amending 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; repealing 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; and creating 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, Lookout Room, 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 April 10, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 11, 2012.

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 April 10, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by March 27, 2012, 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. After the initial notice of proposed rule making was filed, the department made significant changes to the proposed language in chapter 388-449 WAC based on public comment and extensive feedback provided by legal advocates and interested stakeholders. This supplemental notice includes proposed rules substantially different from the proposed rules filed October 26, 2011, as WSR 11-22-032.

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, 74.04.770, 74.08.043, 74.08.335.

Statute Being Implemented: ESHB 2082, Laws of 2011 1st sp. sess.

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: Shane Riddle, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4352.

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 pro-

posed 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."

February 6, 2012
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 12-06 issue of the Register.

WSR 12-05-027

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed February 8, 2012, 1:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-17-122.

Title of Rule and Other Identifying Information: Modifications to chapter 192-270 WAC. The chapter previously applied to training benefits [benefits] for dislocated workers. However, it has been expanded to cover other eligible unemployment insurance recipients. The chapter outlines policies and procedures for individuals applying for and receiving training benefits.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 212 Maple Park, Olympia, WA, on March 29, 2012, at 10:30 a.m.

Date of Intended Adoption: April 4, 2012.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-9799, by March 28, 2012.

Assistance for Persons with Disabilities: Contact Kintu Nnambi by March 28, 2012, TTY (800) 833-6384 or (360) 725-9454.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules clarify eligibility requirements to receive training benefits. Amending WAC 192-270-010, to clarify eligibility of dislocated workers; WAC 192-270-040, to clarify requirements for full-time training and enrollment deadlines; WAC 192-270-045, to clarify application requirements; WAC 192-270-047, to provide that incomplete applications may be returned for completion; WAC 192-270-050, to modify criteria for approving training plans and outline limited circumstances under which academic training can be approved; WAC 192-270-055, to modify procedures related to waiting lists for funding; and WAC 192-270-065, to clarify provisions related to satisfactory progress in training. Changes to other sections incorporate exceptions for dislocated workers under RCW 50.22.155 as amended, and otherwise update language to reflect minor changes to policies and procedures. A new section is adopted relating to earnings deductions for individuals

receiving training changes to reflect changes to RCW 50.20-130.

Reasons Supporting Proposal: Rules implement changes to the training benefits program made by chapter 4, Laws of 2011 (EHB 1091), Part III.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 50.22.155(12).

Statute Being Implemented: RCW 50.22.155 and 50.20.130.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; Enforcement: Nan Thomas, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules clarify eligibility requirements for individuals to receive additional training benefits. They do not impose costs on small business beyond those costs inherent in the statute.

A cost-benefit analysis is not required under RCW 34.05.328. The rules simply clarify policies and procedures and do not meet the definition of significant legislative rules under RCW 34.05.328.

February 8, 2012

Paul Trause
Commissioner

Chapter 192-270 WAC

TRAINING BENEFITS (~~FOR DISLOCATED WORKERS~~)

AMENDATORY SECTION (Amending WSR 09-20-095, filed 10/7/09, effective 11/7/09)

WAC 192-270-005 Definitions. The definitions below apply to this chapter (~~, RCW 50.22.150,~~) and RCW 50.22-155:

(1) "Labor market" means the geographic area in which workers in your particular occupation or with your particular (~~set of~~) skill(~~s~~) sets have customarily found work. For the purpose of determining whether you are a dislocated worker, "labor market" is based on your place of residence at the time you separated from employment. (~~You will not be considered a dislocated worker if, following your separation from work, you move from a labor market area where your skills are in demand to an area where they are declining.~~)

(~~2~~) For claims with an effective date prior to April 5, 2009, "plurality of wages" means the largest proportion of wages earned within a particular occupation or skill set. ~~These wages must be earned in:~~

(~~a~~) Your base year, and

(~~b~~) At least two of the four twelve-month periods preceding your base year.

(~~3~~) (2) "Skill sets" means the work-related knowledge and abilities needed to produce a particular product or provide a particular service.

~~((4))~~ (3) "Training benefits" means the additional benefits paid under RCW ~~((50.22.150 and))~~ 50.22.155 to eligible ~~((dislocated))~~ workers enrolled in and making satisfactory progress in a training program approved by the commissioner.

~~((5))~~ (4) For purposes of RCW 50.22.155 (2)~~((b)(i))~~ (a)(ii)(A) relating to low income workers, the term "total wages" means wages in employment covered under Title 50 RCW or comparable federal or state laws.

AMENDATORY SECTION (Amending WSR 10-13-038, filed 6/8/10, effective 7/9/10)

WAC 192-270-010 Employment separations for dislocated workers—RCW 50.22.155. To be eligible for training benefits as a dislocated worker, you must have been ~~((terminated or received a notice of termination))~~ separated from your employer due to a permanent reduction in operations at your place of employment or for a reason that does not disqualify you from benefits. Training benefits are not available if you left work voluntarily ~~((as provided in RCW 50.20.050, regardless of whether you had))~~ without good cause ~~((for leaving))~~, or if you are disqualified from benefits for work-related misconduct under RCW ~~((50.20.060 or))~~ 50.20.066, and have not requalified for benefits.

When deciding whether your separation from employment makes you eligible for training benefits, the department will look at the last job you held for a period of at least seven weeks in employment covered by Title 50 RCW or ~~((the))~~ comparable federal or state laws ~~((of another state))~~.

AMENDATORY SECTION (Amending WSR 10-13-038, filed 6/8/10, effective 7/9/10)

WAC 192-270-017 Military veterans—RCW 50.22-155 (2)~~((b))~~ (a)(ii)(B). (1) The term "during the twelve-month period" means ~~((the individual))~~ you served in the United States military or Washington National Guard at any point during the twelve-month period prior to application date.

(2) The term "application date" means the date on which ~~((the individual))~~ you filed an initial application for unemployment benefits.

AMENDATORY SECTION (Amending WSR 10-13-038, filed 6/8/10, effective 7/9/10)

WAC 192-270-019 Disabled individuals—RCW 50.22.155 (2)~~((b)(i))~~ (a)(ii)(D). (1) For purposes of this section:

(a) "Injury" means a trauma to the integrity or function of a tissue or organ and the resulting physical conditions;

(b) "Illness" means a condition marked by an obvious deviation from the normal healthy state, characterized by sickness, disease, or other disorder. Alcohol abuse, drug abuse, antisocial behavior, or criminal history alone, or your commitment to a treatment facility, is insufficient by itself to show "illness" within the meaning of this section.

(2) Verification of your injury or illness may, at the department's discretion, require verification from a physician.

AMENDATORY SECTION (Amending WSR 09-20-095, filed 10/7/09, effective 11/7/09)

WAC 192-270-035 Time frames. (1) Information about training benefits will be included in the claimant information booklet mailed to you at the time you file your application for unemployment benefits (see WAC 192-120-010). For purposes of subsections (2) and (3) of this section, the claimant information booklet is considered your notification of the eligibility requirements for the training benefits program.

~~((1))~~ (2) Submitting a training plan.

~~((a))~~ For claims with an effective date prior to April 5, 2009, you have 60 calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 65 calendar days from the date your application for benefits is filed, which represents 60 days plus five days for the booklet to reach you by mail.

~~((b))~~ For claims with an effective date on or after April 5, 2009) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you have ~~((90))~~ ninety calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be ~~((95))~~ ninety-five calendar days from the date your application for benefits is filed, which represents ~~((90))~~ ninety days plus five days for the booklet to reach you by mail.

~~((2))~~ (3) Enrollment in training.

~~((a))~~ For claims with an effective date prior to April 5, 2009, you must be enrolled in training within 90 calendar days, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 95 calendar days from the date your application for benefits is filed, which represents 90 days plus five days for the booklet to reach you by mail.

~~((b))~~ For claims with an effective date on or after April 5, 2009) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you must be enrolled in training ~~((with [within] 120))~~ within one hundred twenty calendar days, beginning on the date you are notified about the eligibility requirements for training benefits. For new claims, the deadline will be ~~((125))~~ one hundred twenty-five calendar days from the date your application for benefits is filed, which represents ~~((120))~~ one hundred twenty days plus five days for the booklet to reach you by mail.

~~((3))~~ For claims with an effective date on or after April 5, 2009) (4) If you are a dislocated worker eligible under RCW 50.22.155 (2)(a)(i), you must submit a training plan and enroll in training prior to the end of your benefit year.

(5) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), these ~~((timeframes))~~ time frames may be waived for good cause. For purposes of this section, "good cause" includes but is not limited to situations where:

(a) You were employer attached, including being on standby or partially unemployed, when you filed your claim for unemployment benefits but your attachment to your employer subsequently ended;

(b) You acted or failed to act on authoritative advice directly from department or partner staff upon which a reasonable person would normally rely;

(c) You were incapacitated due to illness or injury or other factors of similar gravity; or

(d) Other factors which would effectively prevent a reasonably prudent person, as defined in WAC 192-100-010, facing similar circumstances, from meeting the ~~((timelines))~~ time frames established under this section.

~~((4))~~ (6) If you return to work, and subsequently become unemployed, the time frames described in subsections ~~((1) and)~~ (2) and (3) begin with the date you file your additional claim for benefits.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-040 Enrollment in training. (1) To receive training benefits, you must be enrolled in an approved training program. Unless you are a dislocated worker eligible under RCW 50.22.155 (2)(a)(i), or a disabled individual as provided in RCW 50.22.155 (2)(c), you must be enrolled on a full-time basis as determined by the educational institution.

~~((You are enrolled in training if:~~

~~(1) You have)~~

(2) Prior to approval of your training plan, you must:

(a) Be preregistered for classes ~~((or are on a waiting list))~~; and

~~((2) You)~~ (b) Have a starting date of training ~~((; and))~~ that is not more than one quarter or term away.

~~((The starting date is not more than one quarter or term away.))~~ You are considered enrolled in training upon approval of your training plan.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-045 Requirements for applying for training benefits. The following information must be included in your application for training benefits:

(1) Your name and either your Social Security account number or the claimant identification number assigned to you by the department;

(2) The name of the educational institution;

(3) The address of the educational institution;

(4) The department of the educational institution, if applicable;

(5) The name of the training program;

(6) A description of the training program, including remedial requirements if necessary;

(7) ~~((Your enrollment date or your place on the waiting list and expected enrollment date.))~~ The date your training program is expected to start;

(8) The duration of the training program, including the dates you plan to begin and complete training;

(9) Your employment history for the previous three years;

(10) Your plan for completion of the training if training benefits will run out prior to the completion of your plan;

(11) The occupation(s) trained for;

~~((10))~~ (12) A verification of your ~~((enrollment))~~ registration provided by the educational institution;

~~((11))~~ (13) A release of information form authorizing the educational institution to release grades, attendance, and other measures of program progress to the department; and

~~((12))~~ (14) Your signature.

AMENDATORY SECTION (Amending WSR 10-13-038, filed 6/8/10, effective 7/9/10)

WAC 192-270-047 Incomplete applications. An application that is incomplete ~~((will))~~ may be returned to you for completion. If the application is not returned to you for completion, the department will contact you to obtain the information needed to complete the application. The filing of an incomplete application does not extend the time frames under WAC 192-270-035 for filing a completed application for training benefits.

AMENDATORY SECTION (Amending WSR 10-13-038, filed 6/8/10, effective 7/9/10)

WAC 192-270-050 Criteria for approving training plans. (1) The department will consider the following factors when reviewing your application for training benefits:

(a) Whether you have a current benefit year as required by RCW 50.22.010(9);

(b) Your plan for completion of the training ~~((including, but not limited to, the financial resources you intend to use to complete your training when training benefits run out));~~

(c) ~~((Whether you have the qualifications and aptitudes to successfully complete the training;~~

~~((d))~~ For each of the following categories of workers:

(i) **Dislocated workers under RCW 50.22.155 (2)(a)(i):** Whether suitable employment is available in the labor market in which you currently reside and whether the training is likely to enhance your marketable skills and earning power, based on an assessment of what your earning power would be if training were not provided. If you were originally determined to be a dislocated worker, but moved from the area where your skills were declining to an area where your skills are in demand, you are not eligible for training benefits.

(ii) **Low income workers under RCW 50.22.155 (2)((b)(i)) (a)(ii)(A):** Whether vocational training is likely to enhance your earning potential. This consists of training for a career in a high demand occupation that will help you obtain and maintain stable, quality employment.

(iii) ~~((For))~~ **Military veterans, current members of the Washington National Guard, and disabled individuals under RCW 50.22.155 (2)((b)) (a)(ii)((, (iii) and (iv)) (B), (C), and (D):** Whether training is needed to assist you in finding suitable work in your labor market.

~~((e))~~ (d) Whether the training relates to a high demand occupation ~~((;~~

(i) ~~((For claims with an effective date prior to April 5, 2009, "high demand" means that the number of job openings in the labor market for the occupation or with that skill set exceeds the supply of qualified workers.~~

(ii) ~~((For claims with an effective date on or after April 5, 2009, "high demand" means an occupation with a substantial number of current or projected employment opportunities));~~

~~((f))~~ (e) Whether the training is likely to enhance your marketable skills and earning power, based on an assessment of what your employment prospects would be if training were not approved; and

~~((g))~~ (f) Whether the educational institution and training program meet the performance criteria established by the workforce training and education coordinating board.

(2) Academic training ~~((may))~~ will not be approved during the first two years of a degree program. Academic training may be approved during subsequent academic years if it meets the criteria of subsection (1) and it meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(3) The department may approve educational training that has been identified as necessary by the training facility as a prerequisite to a vocational training program that meets the criteria ~~((of))~~ in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-055 Funding—Waiting lists. (1) This section does not apply to dislocated workers eligible under RCW 50.22.155 (2)(a)(i). Approval of training for these individuals is not contingent upon the availability of funding.

(2) For all other claimants eligible for training benefits under RCW 50.22.155, payment ~~((of training benefits))~~ is contingent upon the availability of funding. Training will not be approved under RCW ~~((50.22.150))~~ 50.22.155 unless ~~((the department has determined that))~~ funds are available to support your training plan.

~~((H))~~ (3) The amount of funds obligated will be the amount necessary to complete your training plan or the maximum amount authorized by RCW ~~((50.22.150-5)(a))~~ 50.22.155 (2)(g)(i), whichever is less.

~~((2))~~ (4) If you have been denied training benefits due to lack of funds, the department will consider whether you are eligible for commissioner approved training under WAC 192-200-020.

~~((3))~~ (5) Funds will be obligated ~~((in the following order:~~

(a) ~~First, otherwise eligible dislocated workers who are enrolled in training approved by the department as of February 13, 2000;~~

(b) ~~Second, other~~) to otherwise eligible ~~((dislocated))~~ workers on a first-come, first-served basis, determined by the date the completed training application is received by the department.

~~((4))~~ (6) Once all available funds have been obligated, individuals who have been denied training benefits due solely to the lack of funds will be placed on a waiting list. Priority on the waiting list will be determined by the date the claimant's completed training application was received by the department. As additional funds become available, this date will be used when obligating funds to claimants on the waiting list. In the event two or more claimants on the waiting list have the same date, priority will be given to that person who is closest to exhausting regular unemployment benefits.

~~((5))~~ (7) An individual's name may be removed from the waiting list, upon written notice, when the department

determines it is appropriate. Examples include, but are not limited to:

(a) Written correspondence to the claimant from the department is returned by the U.S. postal service for lack of a current address, and the claimant has not filed a change of address with the department;

(b) The claimant fails to respond to written correspondence from the department by the date indicated in the correspondence;

(c) The claimant is not enrolled in or making satisfactory progress in full-time training; or

(d) Except as provided in RCW 50.22.155 (2)(g)(iv), implementation of the approved training program would result in benefits being paid more than two years beyond the end of the claimant's benefit year.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-065 Certification of satisfactory progress. (1) In order to continue your eligibility for training benefits, the certification that you are making satisfactory progress in ~~((full-time))~~ training must be signed by the registrar or an equivalent person designated by your educational institution. Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), and disabled individuals as provided in RCW 50.22.155 (2)(c), training must be full-time as determined by the educational institution.

(2) Except as provided in subsection (3), for training benefits purposes the term "satisfactory progress" means:

(a) Your grade point average does not fall below 2.0 for ~~((more than one quarter))~~ two consecutive terms;

(b) You maintain a grade point average sufficient to graduate from, or receive certification in, your approved area of study; and

(c) You are completing sufficient credit hours to finish your approved course of study within the time frame established under your approved training plan.

(3) In the case of self-paced or ungraded learning programs, "satisfactory progress" means participating in classes and passing certification examinations within the time frame established under your approved training plan.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-070 Modifying a training plan. (1) You must notify the department prior to making a significant modification to your approved training plan. A significant modification is one that impacts any of the approval criteria listed in WAC 192-270-050 and includes, but is not limited to, changes in:

(a) Your course of study or major;

(b) The educational institution;

(c) The projected start or end dates for the training; or

(d) Your enrolled credit hours.

(2) The department must determine your continued eligibility for training benefits any time you make a significant modification to your training plan, using the criteria listed in WAC 192-270-050 (1)(b)-(g). Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), approval of a modification that increases the projected cost of the training is subject to the availability of funding. The department will conditionally pay benefits on a modified training plan until the modification is approved or denied.

(3) In general, you may make a significant modification to your plan one time. Subsequent modifications will not be approved except in unusual individual circumstances. However, this restriction does not apply while you are enrolled in educational courses that are a prerequisite to vocational training.

(4) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), if you modified your training plan without approval by the department, and that modification is subsequently disapproved, you are ineligible for training benefits for at least five years.

(5) Any benefits paid for a modified training plan that is not approved by the department constitute an overpayment and (~~shall be~~) are subject to recovery under RCW 50.20-190.

NEW SECTION

WAC 192-270-075 Will my benefits be reduced if I am working and receiving training benefits? (1) You are not unemployed during a week if:

(a) You work the number of hours consistent with full-time work for your occupation; or

(b) Your gross earnings equal or exceed one and one-third times your weekly benefit amount plus five dollars.

(2) There are two earnings deductions for claims filed effective July 1, 2012, and later:

(a) If you are not receiving training benefits and are unemployed for a week, the department will subtract five dollars from your gross earnings, multiply by seventy-five percent and round up to the nearest whole dollar. The resulting amount will be deducted from your weekly benefit amount.

Example: You have an unemployment claim effective July 1, 2012, and are receiving regular benefits. Your weekly benefit amount is four hundred dollars. During a week, you work twenty hours as a retail salesperson making ten dollars per hour. Your earnings deduction will be one hundred forty-seven dollars. Your unemployment benefit for the week will be two hundred fifty-three dollars.

(b) If you are receiving training benefits and are unemployed for a week, the department will subtract five dollars from your gross earnings, multiply by fifty percent and round up to the nearest whole dollar. The resulting amount will be deducted from your weekly benefit amount.

Example: You have an unemployment claim effective July 1, 2012, and are receiving training benefits. Your weekly benefit amount is four hundred dollars. During a week, you work twenty hours as a retail salesperson making ten dollars per hour. Your earnings deduction will be ninety-eight dollars. Your unemployment benefit for the week will be three hundred two dollars.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-270-015	Dislocated workers— Unlikely to return to employment—RCW 50.22.155 (2)(a) and 50.04.075.
WAC 192-270-018	Members of the Washington National Guard—RCW 50.22.155 (2)(b)(iii).

WSR 12-05-030

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 8, 2012, 2:48 p.m.]

The department of labor and industries (L&I) is withdrawing WSR 11-24-062 filed on December 6, 2011. L&I will be filing a separate expedited rule making which removes the example of "feral cats" from the definition of "vermin" in response to requests of numerous interest groups.

Please call (360) 902-6805 if you have any questions.

Tamara Jones

Assistant Director for

Legislative and Government Affairs

WSR 12-05-056

PROPOSED RULES

BOARD OF PILOTAGE COMMISSIONERS

[Filed February 14, 2012, 2:52 p.m.]

Continuance of WSR 12-04-023.

Title of Rule and Other Identifying Information: Chapter 363-11 WAC, Practice and procedure—Board of pilotage commissioners.

Hearing Location(s): 2901 Third Avenue, 5th Floor, Alki Conference Room, Seattle, WA 98121, on March 8, 2012, at 9:30 a.m.

Date of Intended Adoption: March 8, 2012.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by March 1, 2012.

Assistance for Persons with Disabilities: Contact Shawna Erickson by March 5, 2012, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this filing is to recontinue the continued February 9 public

hearing to March 8, 2012, and extend the public comment period to March 1, 2012.

February 14, 2012
Peggy Larson
Executive Director

A cost-benefit analysis is not required under RCW 34.05.328. It has minimal to no impact on state funding.

February 15, 2012
Randy Dorn
State Superintendent

WSR 12-05-062
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed February 15, 2012, 11:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-17-086.

Title of Rule and Other Identifying Information: WAC 392-123-132 Finance—School district budgeting—Reconciliation of monthly county treasurers' statement to district records.

Hearing Location(s): Office of Superintendent of Public Instruction, 600 Washington S.E., Wanamaker Conference Room, Olympia, WA 98504, on March 27, 2012, at 10:00 a.m.

Date of Intended Adoption: March 27, 2012.

Submit Written Comments to: Michael J. (Mike) Dooley, P.O. Box 47200, Olympia, WA 98504-7200, e-mail mike.dooley@k12.wa.us, fax (360) 725-6305, by March 25, 2012.

Assistance for Persons with Disabilities: Contact Wanda Griffin by March 25, 2012, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is the second hearing, in consideration of public comments and recommendation. Amended rule provides relief to districts.

Reasons Supporting Proposal: Amended rule provides relief to districts.

Statutory Authority for Adoption: RCW 28A.150.290 (2).

Statute Being Implemented: RCW 28A.150.290(2).

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: Amended rule provides relief to districts.

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Michael J. (Mike) Dooley, OSPI, Olympia, Washington, (360) 725-6305; Implementation: JoLynn Berge, OSPI, Olympia, Washington, (360) 725-6307; and Enforcement: Shawn Lewis, OSPI, Olympia, Washington, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. It has minimal to no impact on state funding.

AMENDATORY SECTION (Amending Order 8-76, filed 7/23/76)

WAC 392-123-132 Reconciliation of monthly county treasurers' statements to district records. Every school district shall reconcile (~~ending net cash and investments, revenues and expenditures~~) amounts reported by the county treasurer with the district records for all funds. Any differences shall be noted and adjustments to school district records shall be made if necessary.

WSR 12-05-070
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-30—Filed February 16, 2012, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-109.

Title of Rule and Other Identifying Information: Certificates of insurance.

Hearing Location(s): OIC Tumwater Office, Training Room 120, 5000 Capitol Boulevard, Tumwater, WA, <http://www.insurance.wa.gov/about/directions.shtml>, on March 28, 2012, at 10:00 a.m.

Date of Intended Adoption: April 2, 2012.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by March 26, 2012.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule governs the issuance of certificates of insurance.

Reasons Supporting Proposal: The purpose of this proposed rule is to prevent the issuance of certificates of insurance that purport to alter the terms of a policy or endorsement of insurance.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.30.090.

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

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

Name of Agency Personnel Responsible for Drafting: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7041; Implementation: John Hamje, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7262; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no cost imposed by this proposed regulatory amendment on any business; the cost of not issuing a certificate of insurance that improperly represents the coverage provided by an insurance policy is zero.

A cost-benefit analysis is not required under RCW 34.05.328. The new rule section (WAC 284-30-355) proposed in this filing for certificates of insurance provides definitions and clarifications to be used in interpreting the provisions of RCW 48.30.090 but does not impose penalties or sanctions. Therefore, a cost-benefit analysis is not required for this rule because it is an "interpretive rule" as defined under RCW 34.05.328 (5)(c)(ii).

February 16, 2012
Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-30-355 Certificates of insurance. (1) The following definitions apply to this section.

(a) "Certificate" or "certificate of insurance" means any document, without regard to title or description, that is issued by an insurer, insurance producer, or surplus line broker as evidence of property or casualty insurance coverage. Certificate or certificate of insurance as used in this section does not include an insurance policy, insurance binder, an automobile insurance identification or information card, or a certificate issued to a person or entity that has purchased coverage under a master policy.

(b) "Certificate holder" means any person, other than a policyholder, that requests, obtains, or possesses a certificate.

(c) "Property" means the insurance coverages described in RCW 48.11.040.

(d) "Casualty" means the insurance coverages described in RCW 48.11.070.

(e) "Insurance binder" means a temporary document that serves as evidence of insurance until the insurance policy is issued.

(f) "Insurance policy" means the executed insurance policy issued to the named insured as part of an insurance transaction as defined in RCW 48.01.060.

(2) This section applies to all:

(a) Certificate holders, policyholders, insurers, insurance producers, surplus line brokers; and

(b) Certificates issued as evidence of insurance coverage for risks located in this state without regard to where a certificate holder, policyholder, insurer, insurance producer, or surplus line broker is located.

(3)(a) If a certificate holder is named within the policy or endorsement and the policy or endorsement requires notice to be provided to the certificate holder, a certificate holder only possesses a right to notice of:

(i) Cancellation;

(ii) Nonrenewal; or

(iii) A material change, or any similar notice concerning the insurance policy.

(b) The insurance policy governs the terms and conditions of the notice, including the timing of the notice.

(4) No person may knowingly demand or require an insurer, insurance producer, surplus line broker, or policyholder to issue a certificate that contains any false or misleading information or that purports to alter, amend, or extend the coverage provided by the insurance policy.

(5) No person may knowingly issue or circulate a certificate that contains any false or misleading information or that purports to alter, amend, or extend the coverage provided by the insurance policy.

(6) No person may issue, demand, or require, either in addition to or in lieu of a certificate, a document that contains any false or misleading information or that purports to alter, amend, or extend the coverage provided by the insurance policy.

(7)(a) Nothing in this section affects or excuses a person's obligation to obtain an insurance policy for the benefit of a third party that conforms to specific contractual or legal requirements.

(b) Notwithstanding any requirement, term, or condition of any contract, the insurance coverage provided by the referenced policy of insurance is subject to all the terms, exclusions, and conditions of the policy. A certificate of insurance does not confer new or additional rights beyond what the referenced policy of insurance provides.

WSR 12-05-073
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed February 16, 2012, 2:34 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-335-990 Fees, in-home services licensing fee increase.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501-7852, on April 4, 2012, at 9:30 a.m.

Date of Intended Adoption: April 18, 2012.

Submit Written Comments to: John Hilger, P.O. Box 47852, Olympia, WA 98504-7852, e-mail john.hilger@doh.wa.gov, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by April 4, 2012.

Assistance for Persons with Disabilities: Contact John Hilger by March 28, 2012, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules increase licensing fees for in-home services (IHS) agencies. In 2010, the department's general fund state (GF-S) biennial funding of \$143,000 was eliminated for its IHS program. In 2011, the Washington state legislature adopted the 2011-2013 operating budget (2ESHB 1087, chapter 50, Laws of 2011 1st sp. sess.), giving the department authority to raise licensing fees to cover the cost of administering the program.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program be fully borne by the members of that business. The department is required to periodically adjust fees at a sufficient level to defray the costs of administering its programs. Due to the loss of GF-S fund-

ing, current anticipated revenue is not sufficient to cover the costs of administering the IHS program. The loss of this funding has made it necessary for the department to request an increase in fees. These fees are critical to ensuring the safety of people receiving home and community based health services.

Statutory Authority for Adoption: Chapter 43.70 RCW; 2ESHB 1087, chapter 50, Laws of 2011 1st sp. sess.

Statute Being Implemented: Chapter 43.70 RCW; 2ESHB 1087, chapter 50, Laws of 2011 1st sp. sess.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Hilger, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2929.

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.

February 16, 2012
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 08-12-036, filed 5/30/08, effective 7/1/08)

WAC 246-335-990 Fees. (1) A licensee or applicant shall submit to the department:

(a) An initial twelve-month license fee of two thousand ~~((one hundred sixty-two))~~ four hundred thirty-two dollars for each service category for new persons not currently licensed in that category to provide in-home services in Washington state, or currently licensed businesses which have had statement of charges filed against them;

(b) A twenty-four month renewal fee ~~((based on the number of full-time equivalents (FTEs), which is a measurement based on a forty-hour week and is applicable to paid agency personnel or contractors, or the number of beds, as follows))~~ for home care, home health and hospice agencies, based on the number of full-time equivalents (FTEs), which is a measurement based on a forty-hour week and is applicable to paid agency personnel or contractors, according to the following table. A twenty-four month renewal fee for hospice care centers, based on the number of beds, according to the following table:

~~((e))~~ (i) For single service category licenses:

# of FTEs	Home Health	Hospice	Home Care	# of Beds	Hospice Care Center
5 or less	\$(2,162.00) <u>2,432.00</u>	\$(1,081.00) <u>1,216.00</u>	\$(649.00) <u>730.00</u>	5 or less	\$(720.00) <u>810.00</u>
6 to 15	\$(3,041.00) <u>3,421.00</u>	\$(1,138.00) <u>1,280.00</u>	\$(1,174.00) <u>1,321.00</u>	6 to 10	\$(1,442.00) <u>1,622.00</u>
16 to 50	\$(3,460.00) <u>3,893.00</u>	\$(1,694.00) <u>1,906.00</u>	\$(1,261.00) <u>1,419.00</u>	11 to 15	\$(2,162.00) <u>2,432.00</u>
51 to 100	\$(4,361.00) <u>4,906.00</u>	\$(2,713.00) <u>3,052.00</u>	\$(1,477.00) <u>1,662.00</u>	16 to 20	\$(2,883.00) <u>3,243.00</u>
101 or more	\$(4,491.00) <u>5,052.00</u>	\$(2,854.00) <u>3,211.00</u>	\$(1,586.00) <u>1,784.00</u>		

~~((e))~~ (ii) For multiple service category licenses:

~~((i))~~ (A) One hundred percent of the home health category fee and seventy-five percent of the appropriate service category fee for each additional service category (hospice, home care, hospice care center); or

~~((ii))~~ (B) One hundred percent of the hospice category fee and seventy-five percent of the appropriate service category fee for each additional service category (home care, hospice care center); and

~~((e))~~ (c) A change of ownership fee of two hundred ~~((sixteen))~~ fifty dollars for each licensed service category. A new license will be issued and valid for the remainder of the current license period.

(2) The department may charge and collect from a licensee a fee of one thousand ~~((eighty-one))~~ two hundred ninety-seven dollars for:

(a) A second on-site visit resulting from failure of the licensee to adequately respond to a statement of deficiencies~~((:))~~;

(b) A complete on-site survey resulting from a substantiated complaint; or

(c) A follow-up compliance survey.

(3) A licensee with deemed status shall pay fees according to this section.

(4) A licensee shall submit an additional late fee in the amount of ~~((thirty-six))~~ fifty dollars per day, not to exceed ~~((five))~~ six hundred fifty dollars, from the renewal date (which is thirty days before the current license expiration date) until the date of mailing the fee, as evidenced by the postmark.

(5) Refunds. The department shall refund fees paid by the applicant for initial licensure as follows:

(a) If an application has been received but no on-site survey or technical assistance has been performed by the department, two-thirds of the fees paid, less a fifty dollar processing fee; or

(b) If an application has been received and an on-site survey or technical assistance has been performed by the department, one-third of the fees paid, less a fifty dollar processing fee.

(6) The department may not refund applicant fees if:

(a) The department has performed more than one on-site visit for any purpose;

(b) One year has elapsed since an initial licensure application is received by the department, but no license is issued because applicant failed to complete requirements for licensure; or

(c) The amount to be refunded as calculated by subsection (5)(a) or (b) of this section is ten dollars or less.

Statute Being Implemented: Chapter 43.70 RCW; 2ESHB 1087 (chapter 50, Laws of 2011).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Williams, Department of Health, 310 Israel Road S.E., Olympia, WA 98504, (360) 236-2944.

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.

February 16, 2012

Mary C. Selecky

Secretary

WSR 12-05-078

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed February 16, 2012, 2:59 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-314-990, amending to increase fees for construction review services.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98504, on April 5, 2012, at 9:00 a.m.

Date of Intended Adoption: April 13, 2012.

Submit Written Comments to: John Williams, Department of Health, Health Professions and Facilities, P.O. Box 47852, Olympia, WA 98504, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by April 5, 2012.

Assistance for Persons with Disabilities: Contact John Williams by March 29, 2012, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule increases fees for construction review services (CRS) to cover the costs of running the program. Increasing the fees will allow the department of health (department) to continue providing plan reviews and technical assistance services to clients in a timely manner.

Reasons Supporting Proposal: The 2011 legislature authorized the department to increase fees for CRS in the budget bill (2ESHB 1087). RCW 43.70.110 provides authority for the department to charge fees for inspections and RCW 43.70.250 requires that fees cover the full costs of running the program. The current fee has not been modified in over fifteen years, but the basic operational costs of the program have steadily been increasing. A fee increase is needed to maintain reasonable plan review times and prevent costly delays in construction.

Statutory Authority for Adoption: Chapter 43.70 RCW; 2ESHB 1087 (chapter 50, Laws of 2011).

AMENDATORY SECTION (Amending WSR 10-22-109, filed 11/2/10, effective 12/3/10)

WAC 246-314-990 Construction review fees. (1)

Upon prior approval by the program the project sponsor may exclude from the "project cost" the cost for fixed or installed technologically advanced clinical equipment such as but not limited to: Lithotripters, CT scans, linear accelerators, and MRIs.

(2) **Project fee table.** Except as provided in subsection (4) and (5) of this section, the following fees will be charged for project review based on the cost of the project:

PROJECT FEE TABLE

Project Cost	Project Review Fee
\$ 0 to \$ 999	\$ ((420)) <u>150</u>
1,000 to 1,999	((250)) <u>305</u>
2,000 to 2,999	((325)) <u>400</u>
3,000 to 4,999	((410)) <u>500</u>
5,000 to 9,999	((530)) <u>650</u>
10,000 to 19,999	((665)) <u>815</u>
20,000 to 29,999	((820)) <u>1,000</u>
30,000 to 39,999	((975)) <u>1,190</u>
40,000 to 49,999	((1,125)) <u>1,375</u>
50,000 to 64,999	((1,325)) <u>1,620</u>
65,000 to 79,999	((1,535)) <u>1,875</u>
80,000 to 99,999	((1,845)) <u>2,250</u>
100,000 to 124,999	((2,200)) <u>2,690</u>
125,000 to 149,999	((2,550)) <u>3,120</u>
150,000 to 199,999	((2,970)) <u>3,625</u>
200,000 to 249,999	((3,325)) <u>4,060</u>
250,000 to 324,999	((3,650)) <u>4,455</u>

PROJECT FEE TABLE

Project Cost	Project Review Fee
325,000 to 449,999	((4,100)) <u>5,000</u>
450,000 to 574,999	((4,600)) <u>5,615</u>
575,000 to 699,999	((5,200)) <u>6,350</u>
700,000 to 849,999	((5,825)) <u>7,110</u>
850,000 to 999,999	((6,550)) <u>7,995</u>
1,000,000 to 1,249,999	((7,150)) <u>8,725</u>
1,250,000 to 2,499,999	((7,850)) <u>9,560</u>
2,500,000 to 2,999,999	((8,550)) <u>10,430</u>
3,000,000 to 3,499,999	((9,300)) <u>11,350</u>
3,500,000 to 4,999,999	((10,750)) <u>13,115</u>
5,000,000 to 6,999,999	((12,200)) <u>14,885</u>
7,000,000 to 9,999,999	((13,800)) <u>16,840</u>
10,000,000 to 14,999,999	((15,850)) <u>19,340</u>
15,000,000 to 19,999,999	((17,850)) <u>21,780</u>
20,000,000 to 29,999,999	((19,900)) <u>24,280</u>
30,000,000 to 39,999,999	((23,000)) <u>28,060</u>
40,000,000 to 59,999,999	((25,600)) <u>31,235</u>
60,000,000 and over	((28,700)) <u>31,235</u> <u>plus 0.05% per dol-</u> <u>lar above 60 million</u>

(3) **Existing building conversions.** Building conversion fees will be based on the value of existing construction. Fees will be charged for project review based on the project fee table in subsection (2) of this section.

(a) The existing construction value is based on the local area cost data.

(b) Current cost data (~~will be made~~) is available and posted on the construction review services web site: (~~http://www.doh.wa.gov/hsqa/fsl/CRS~~) <http://www.doh.wa.gov/crs>.

(c) Project sponsors may submit specific cost data that accurately describes the estimate good faith value for the program's consideration.

(4) **Flat fees.** The following projects will receive a discount on project review fees:

(a) Installation of finishes only, one hundred (~~twenty~~) fifty dollars;

(b) Change of approved use only, one hundred (~~twenty~~) fifty dollars;

(c) The first submission for review and approval of the site installation of a mobile unit, (~~four~~) five hundred (~~seventy~~) seventy-five dollars. Each additional submission of the same project, two hundred eighty-five dollars;

(d) The first submission for review and approval of the equipment supplier of a mobile unit, (~~four~~) five hundred (~~seventy~~) seventy-five dollars. Each additional submission of the same project, two hundred eighty-five dollars;

(e) Each eight staff hours or fraction thereof for technical assistance, (~~four~~) five hundred (~~ten~~) dollars. For technical assistance requiring travel, the program may increase the fee to include travel expenses;

(f) Special projects as determined by the program that requires minimal or highly repetitive review, (~~four~~) five hundred (~~ten~~) dollars for every review(~~or~~) or inspection after the initial review;

(g) Plan review and inspection for the on-site installation of the foundation, and hook-ups including, but not limited to, potable water, sewage disposal systems, or gas connections for factory assembled structures, two hundred fifty dollars per site visit regardless of the number of sites installed and completed at the time of inspection;

(h) On-site inspection and plan review for foundation pad for temporary structures including, but not limited to, tents and RVs, one hundred and twenty dollars per site visit regardless of the number of pads installed and completed at the time of inspection.

(5) **Fee reductions.** The program may decrease the project review fees, when:

(a) The project sponsor requests a reduction in the fee according to subsection (1) of this section;

(b) The project is prepared by a state licensed architect or engineer when architectural or engineering services are not required by rule. The project may qualify for a reduction of up to fifteen percent;

(c) A facility is converted from another occupancy as defined by the state building code; a facility is converted from one license to another; or, a facility that is currently unlicensed, but was previously licensed through the (~~DOH or DSHS~~) Washington state department of health or the Washington state department of social and health services, wishes to be reviewed for relicensure. The project may qualify for a reduction of up to fifty percent. The amount of fee reduction will be determined by the estimated amount of systems review required to ensure that the rules have been met.

(6) Total fee reductions may not exceed seventy percent of the original estimated project review fee.

(7) **Refunds.** The program shall refund fees paid when requested by the applicant as follows:

(a) The final attested project cost is less than the project estimated on the application. Fees paid may be refunded by the program according to the project fee table in subsection (2) of this section.

(b) If a project is canceled after an application and fee has been received but no plan review or technical assistance has been performed by the program, seventy-five percent of the fees paid.

(c) If a project is canceled after an application and fee has been received and plan review or technical assistance has been performed by the department, fifty percent of the fees paid.

(8) No fees paid by the applicant will be refunded after project cancellation if any of the following applies:

(a) More than two on-site visits, conferences, or plan reviews for any purpose have been performed by the program;

(b) One year has elapsed since an application and fee is received by the program, but no permit is issued because applicant failed to complete requirements for permit, and the applicant has not pursued the project in good faith;

(c) The amount to be refunded as calculated by subsection (7)(a), (b), or (c) of this section is one hundred twenty dollars or less;

(d) Approval or authorization to begin construction or a permit has been issued or construction has begun prior to a request from the applicant to cancel the project; or

(e) A written request has not been received to cancel the project.

WSR 12-05-085
PROPOSED RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed February 17, 2012, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-02-051.

Title of Rule and Other Identifying Information: WAC 132Q-136-040 Limitations.

Hearing Location(s): CCS Board of Trustees Meeting, Institute for Extended Learning Lodge, 3305 West Fort George Wright Drive, Spokane, WA, on April 17, 2012, at 8:30 a.m.

Date of Intended Adoption: April 17, 2012.

Submit Written Comments to: Kathleen Roberson, Community Colleges of Spokane, Mailstop 1006, P.O. Box 6000, Spokane, WA 99217-6000, e-mail kathleen.roberson@ccs.spokane.edu, fax (509) 434-5275, by April 9, 2012.

Assistance for Persons with Disabilities: Contact Kathleen Roberson by April 9, 2012, (509) 434-5275.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend and clarify the limitations of use of district facilities.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

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

Name of Proponent: Community Colleges of Spokane, governmental.

Name of Agency Personnel Responsible for Drafting: Kathleen Roberson, 501 North Riverpoint Boulevard, Suite 204, Spokane, WA 99202, (509) 434-5275; Implementation and Enforcement: Community Colleges of Spokane, 501 North Riverpoint Boulevard, Suite 204, Spokane, WA 99202, (509) 434-5275.

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

A cost-benefit analysis is not required under RCW 34.05.328. Community Colleges of Spokane is not a listed agency under RCW 34.05.328 and is therefore exempt from this provision.

February 17, 2012
Kathleen Roberson
Executive Assistant
to the CFO

AMENDATORY SECTION (Amending WSR 11-20-027, filed 9/23/11, effective 10/24/11)

WAC 132Q-136-040 Limitations. (1) District facilities of Washington State Community College District 17 may not be used in ways that substantially obstruct or disrupt educational activities or freedom of movement or other lawful activities on or in district facilities.

(2) District facilities may not be used by groups, including informal groups, which discriminate in their membership or limit participation in activities on the basis of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical (~~handicap~~) disability.

(3) College personnel or official student organizations may use district facilities to present educational forums regarding ballot propositions and/or candidates who have filed for public office as long as the audience is limited to college personnel and students. However, pursuant to RCW 42.17.130 "the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition" is prohibited.

(4) District facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities are in conjunction with authorized use of facilities by outside groups, fund raising activities directly benefiting the district, or activities fulfilling an educational or service need of the students or college personnel. The sale of any item, the use of any advertising material, or operation of any promotional activity is subject to prior approval of the chancellor or designee.

(5) The distribution of handbills, leaflets, pamphlets and similar materials is not permitted in or on those facilities to which access by the general public is restricted or where such distribution would significantly impinge upon the primary business being conducted.

(6) Charitable solicitation is not permitted in or on those facilities to which access by the general public is restricted or where such solicitation would significantly impinge upon the primary business being conducted.

(7) District facilities may be used by other public or private educational institutions or public agencies only insofar as the intended use of the facilities meets a community need not being fulfilled by District 17 and where such activities do not interfere with the educational programs being offered by District 17 or with the maintenance and repair programs of the district. A user fee, if any, for such use shall be determined by the chancellor or designee.

(8) Organizations or persons other than district personnel or official student organizations may use district facilities only after the procedures pursuant to WAC 132Q-136-050 are completed and appropriate user fees have been paid in full or satisfactory payment arrangements completed.

(9) District 17 reserves the right to require that the district be represented at any use of facilities where the presence of a representative is in the best interest of the district.

(10) District equipment shall be used only when authorized and shall not be removed from any facility unless written authorization for such removal has been obtained prior to use.

(11) No decorations or other application of material to walls, ceiling or floors of any facility shall be permitted if such application will in any way mar, deface or injure the facility. Users shall be responsible for the removal or disposal of any decorations, materials, equipment, furnishings or rubbish that remain in or on any facility following use of the facility. Failure of any user to meet this obligation that results in additional cost to the district shall subject the user to additional charges for such costs.

(12) College property may not be used for camping, defined to include sleeping, carrying on cooking activities, storing personal belongings, or the erection of tents or other shelters or structures used for purposes of personal habitation.

WSR 12-05-094
PROPOSED RULES
FOREST PRACTICES BOARD

[Filed February 17, 2012, 2:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-17-095.

Title of Rule and Other Identifying Information: Forestry riparian easement program (FREP) changes.

Hearing Location(s): Spokane Public Library, 906 West Main, Room 1A, Spokane, (509) 444-5300, on March 27, 2012, at 4 p.m.; and at Centralia Community College, 420 West Walnut, Hanson Board Room, Centralia, (360) 736-9391 ext. 218, on March 29, 2012, at 6 p.m.

Date of Intended Adoption: May 8, 2012.

Submit Written Comments to: Patricia Anderson, DNR Forest Practices Division, 1111 Washington Street S.E., P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@dnr.wa.gov, fax (360) 902-1428, by March 30, 2012.

Assistance for Persons with Disabilities: Contact forest practices division at (360) 902-1400, by March 16, 2012, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal is to amend chapter 222-21 WAC to modify FREP rules according to recent changes in law. The proposed rules include changes in eligibility and compensation criteria, as well as clarifications throughout the chapter including those related to documentation, application, and valuation.

Reasons Supporting Proposal: FREP is a conservation easement program established in 2001 to help compensate qualifying small forest landowners for new regulations protecting aquatic resources. In 2011, the state legislature made several changes to the program in amendments to chapter 76.13 RCW. Currently the FREP rules (chapter 222-21 WAC) do not reflect those changes, and therefore the board proposes to amend the rules accordingly.

Statutory Authority for Adoption: RCW 76.09.040, 76.09.370, and 76.13.120.

Statute Being Implemented: Chapter 76.13 RCW.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Dan Pomerenk and Gretchen Robinson, 1111 Washington Street S.E., Olympia, (360) 902-1427, (360) 902-1705; Implementation: Marc Engel, 1111 Washington Street S.E., Olympia, (360) 902-1390; and Enforcement: Darin Cramer, 1111 Washington Street S.E., Olympia, (360) 902-1744.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The small business economic impact statement is not required for this rule proposal because participation in the FREP is voluntary and the rule proposal does not impose regulatory requirements or costs on businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Gretchen Robinson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov.

February 21 [17], 2012

B. Moran
Chair

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-21-005 Policy. The legislature has found that further reduction in harvestable timber owned by small forest landowners as a result of the rules adopted under RCW 76.09.055 or 76.09.370 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature addressed these concerns by establishing a forestry riparian easement program to acquire easements from qualifying small forest landowners along riparian and other areas of value to the state for protection of aquatic resources.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-21-010 Definitions. The following definitions apply to this chapter:

(1) ~~((**"Commercially reasonable harvest unit"** means a harvest area that meets the requirements of WAC 222-21-060.~~

(2)) **"Completion of harvest"** means that the trees within the area under an approved forest practices application have been harvested ~~((from an area under an approved forest practices application))~~ and ~~((that))~~ further entry into that area by any type of logging or slash treating equipment or method is not expected.

~~((3)) **"Compliance costs"** includes the cost of preparing and recording the easement, and any business and occupation tax and real estate excise tax imposed because of entering into the easement.~~

~~(4) "Danger tree" means any qualifying timber reasonably perceived to pose an imminent danger to life or improved property.~~

~~(5)) (2) "Easement premises" means the geographic area designated in a forestry riparian easement, including ((the)) areas in which qualifying timber is located. ((Easement premises may be categorized as follows:~~

~~(a) Riparian area easement premises means riparian areas and areas upon which qualifying timber associated with riparian areas are located.~~

~~(b) Other easement premises means areas of land required to be left unharvested under rules adopted under RCW 76.09.055 or 76.09.370 including areas upon which other qualifying timber outside riparian areas is located and areas of land upon which uneconomic qualifying timber is located.~~

~~(6)) (3) "Forestry riparian easement" means ((an)) a conservation easement covering qualifying timber granted voluntarily to the state by a qualifying small forest landowner.~~

~~((7)) (4) "Forests and fish rules" means the rules adopted by the board in accordance with RCW 76.09.055, 76.09.370, and the amendments to those rules.~~

~~(5) "Hazardous substances" ((means)) includes, but is not limited to, hazardous substances as defined in RCW 70.102.010((5)) and 70.105D.020((7)), and solid waste as defined in RCW 70.95.030((22)).~~

~~((8) "High impact regulatory threshold" means the threshold where the value of qualifying timber is greater than 19.1% (for timber in Western Washington) or 12.2% (for timber in Eastern Washington) of the value of the harvested timber and qualifying timber under the approved forest practices application covering the qualifying timber.~~

~~(9)) (6) "Qualifying small forest landowner" means an owner of forest land with qualifying timber having all of the characteristics in (a)(i) through (iv) of this subsection as of the date the department receives a forest practices application associated with a proposed forestry riparian easement, and the date the department offers compensation for the easement.~~

~~(a) A qualifying small forest landowner:~~

~~(i) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still be a qualifying small forest landowner under this chapter;~~

~~(ii) Has a fee interest in the land and timber or has rights to harvest the timber to be included in the forestry riparian easement that extend at least fifty years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office;~~

~~(iii) Has no outstanding violations of chapters 76.09 or 76.13 RCW or any associated forest practices rules;~~

~~(iv) Has harvested or expects to harvest from his or her forest lands in this state as follows:~~

~~(A) No more than the average volume that would qualify the landowner as a "small harvester" under RCW 84.33.035 during the three years prior to the year the department receives a complete forest practices application associated with the easement, and certifies that he or she does not expect~~

~~to exceed that average timber volume during the ten years following the date of the offer of compensation for the easement; or~~

~~(B) If the landowner can establish to the satisfaction of the small forest landowner office that those harvest limits were or will be exceeded to raise funds to pay estate taxes or other equally compelling and unexpected obligations such as court-ordered judgments or extraordinary expenses, the landowner may still be a qualifying small forest landowner.~~

~~(b) To be eligible for a forestry riparian easement, a qualifying small forest landowner must have submitted a forest practices application covering qualifying timber to the appropriate region office, and the department must have approved or disapproved the application. See WAC 222-21-032 for more information about easement eligibility.~~

~~(7) "Qualifying timber" means those forest trees that are:~~

~~(a) Covered by a forest practices application ((that the small forest landowner is)) and required to ((leave)) be left unharvested ((under rules adopted under RCW 76.09.055 or 76.09.370)) because of forests and fish rule restrictions, or ((that)) are made uneconomic to harvest ((by those rules, and for which the small forest landowner is willing to grant the state a forestry riparian easement)) because of forests and fish rule restrictions. ((Qualifying timber is timber within or bordering))~~

~~(b) Within, immediately adjacent to, or physically connected to a commercially reasonable harvest unit, or ((timber for which)) included in an approved forest practices application for a timber harvest that cannot be obtained because of forests and fish rule restrictions ((under these rules. Qualifying timber is categorized as follows:~~

~~(a) Permanent qualifying timber includes trees that shall not be harvested or damaged or removed from the easement premises during the term of the easement.~~

~~(i) Where permanent qualifying timber is in areas in which no harvest may take place, the easement shall describe the boundaries of the areas. No harvest of any tree within this area shall take place during the term of the easement.~~

~~(ii) Where permanent qualifying timber is located in areas in which selective harvest may take place, the permanent qualifying timber must be tagged for the duration of the easement.~~

~~(b) Reserve qualifying timber includes trees that may be harvested and removed but only in compliance with the terms of the easement. Reserve qualifying timber shall be identified separately from the permanent qualifying timber.~~

~~(c) Replacement qualifying timber includes trees which, in the future, will be substituted for the reserve qualifying timber before the reserve qualifying timber may be harvested or removed from the property. Replacement qualifying timber will be selected from time to time pursuant to the provisions of the easement and will be subject to the terms and protections of the easement.~~

~~(d) Uneconomic qualifying timber includes trees made uneconomical to harvest. The trees are considered permanent qualifying timber and may not be harvested or otherwise damaged during the term of the easement.~~

~~(e) Other qualifying timber outside riparian areas includes trees that may not be harvested under forest prac-~~

ties rules adopted under RCW 76.09.055 or 76.09.370 for reasons other than protection of riparian functions. It includes without limitation trees that are unharvestable because of public safety concerns. The trees are considered permanent qualifying timber and may not be harvested or otherwise damaged during the term of the easement.

(10) **"Reimbursement"** means the repayment that the department shall provide to small forest landowners for the actual costs incurred for laying out the streamside buffers and marking the qualifying timber once a contract has been executed for the forestry riparian easement program.

(11) **"Riparian areas"** include the areas designated in a forestry riparian easement. Riparian areas include without limitation all riparian and other special management zones required by the forest practices rules for protection of aquatic resources and includes associated qualifying timber.

(12) **"Riparian function"** includes bank stability, recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic systems conditions.

(13) **"Small forest landowner"** means:

(a) A forest landowner meeting all of the following characteristics as of the date a forest practices application is received (see WAC 222-20-010(7)), or the date the landowner provides written notification to the small forest landowner office that the harvest is to begin, for which the forestry riparian easement is associated:

(i) Is an individual, partnership, corporate, or other non-governmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section;

(ii) Has a fee interest in the land and timber or has rights to harvest the timber to be included in the forestry riparian easement that extend at least fifty years from the date the forest practices application associated with the easement is received;

(iii) Has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the forest landowner as a small harvester under RCW 84.33.035(14); and

(iv) Certifies at the time the forest practices application is received that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035(14) during the ten years following receipt of the application.

(b) A forest landowner whose prior three-year average harvest exceeds the limit of RCW 84.33.035(14), or who expects to exceed this limit during the ten years following receipt of the forest practices application, may still qualify as a small forest landowner if that landowner establishes to the small forest landowner office reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses. (Note: The small forest landowner office will establish a board manual governing these exceptions.)

(c) A landowner may still qualify as a small forest landowner if the landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules adopted under RCW 76.09.055 or 76.09.370).

(c) Located within any one of the following categories:

(i) Riparian or other sensitive aquatic areas;

(ii) Channel migration zones; or

(iii) Areas of potentially unstable slopes or landforms, verified by the department, that have the potential to deliver sediment or debris to a public resource or threaten public safety and is immediately adjacent to or physically connected to other qualifying timber that is located within riparian or other sensitive aquatic areas.

~~((14))~~ (8) **"Small forest landowner office"** ~~((is))~~ means an office within the department ~~((described in RCW 76.13.110, and it shall be))~~ of natural resources. The office is a resource and focal point for small forest landowner concerns and policies, and ~~((shall have significant))~~ has expertise regarding the management of small forest holdings and government programs applicable to such holdings ~~((and the))~~. The office manages the forestry riparian easement program.

~~((15))~~ **"Uneconomical to harvest"** means that a harvest area meets the requirements of WAC 222-21-065.)

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-21-030 ((Document)) Documentation and standards. ~~((1)) Riparian easement.~~ The riparian easement document must be substantially in the following form, but may be modified by the small forest landowner office whenever necessary to accomplish the purposes of RCW 76.13.120.

(This version assumes ownership of land and trees)

FORESTRY RIPARIAN EASEMENT

THIS GRANT OF A FORESTRY RIPARIAN EASEMENT is made on this day of , 20, by [a corporation, limited liability company, partnership, limited partnership, limited liability partnership] [husband and wife] [individual] [or others as appropriate] having an address at ("Grantor"), to and in favor of the State of Washington, acting by and through the Department of Natural Resources ("Grantee").

1.0 RECITALS AND PURPOSE

~~1.1~~ This Easement is intended to implement the goals of the Forest Practices Salmon Recovery Act, ESHB 2091, sections 501 through 504, chapter 4, Laws of 1999 ("Salmon Recovery Act"). The goals include avoiding the further erosion of the small forest landowners' economic viability and willingness or ability to keep the lands in forestry use which would reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources, through the establishment of a forestry riparian easement program to acquire easements from small forest landowners along riparian and other areas of value to the state for protection of aquatic resources.

~~1.2~~ This Easement is intended to protect the Qualifying Timber and riparian functions associated with the qualifying timber located on the Easement Premises as provided by the terms of this Easement as set forth in Exhibit B while preserving all lawful uses of the Easement Premises by Grantor consistent with the Easement objectives, and to provide Grantee with the ability to enforce the terms thereof.

~~1.3~~ The Easement Premises and Qualifying Timber are located, as described in ~~Exhibit A~~; that the encumbrances, if any, are as set forth in ~~Exhibit A~~, that all Exhibits referenced herein and attachments thereto are incorporated into this Easement as part of this Easement; and that the Grantor wishes to execute this Forestry Riparian Easement.

2.0 CONVEYANCE AND CONSIDERATION

~~2.1~~ In consideration of the mutual covenants contained herein, including without limitation the monetary consideration set forth in subsection 2.2 below, the Grantor does hereby voluntarily warrant and convey to the Grantee a Forestry Riparian Easement under the Salmon Recovery Act, which Easement shall remain in full force and effect from the date hereof until it expires on (month, date, year) [50 years from the date the complete and accurate forest practices application is submitted], which Easement shall consist of the rights and restrictions expressly set forth herein.

~~2.2~~ In consideration of this Easement, Grantee shall pay to Grantor the sum of _____ dollars (\$____.00).

IN WITNESS WHEREOF Grantor and Grantee have executed this instrument on the day and year written:

GRANTOR:

Date: _____

By: _____

GRANTEE:

State of Washington

By and Through the Department of
~~Natural Resources~~

Date: _____

(Title)

(insert form of acknowledgement, as appropriate)

EXHIBIT A

A1 DESCRIPTION AND LOCATION OF QUALIFYING TIMBER

The Qualifying Timber includes the following categories of trees located within the Easement Premises:

[List the categories relevant to particular Easement, i.e., Permanent, Reserve, Replacement, Uneconomic, or Other Qualifying Timber.] The Qualifying Timber is located as shown in the documentation attached hereto as Attachment A-1.

A2 DESCRIPTION AND LOCATION OF EASEMENT PREMISES

The Easement Premises is [insert description using the standards developed under Section 504(9)(b) of the Salmon Recovery Act including the categories relevant to particular Easement, i.e., Riparian Area and Other Easement Premises] as shown in the documentation attached hereto as Attachment A-2 and is located in [insert legal subdivision/lot, etc., in which the Easement Premises exists.]

A3 BASELINE IDENTIFICATION, DESCRIPTION AND DOCUMENTATION OF PROPERTY, EASEMENT PREMISES AND QUALIFYING TIMBER

The parties agree that the current use, condition of the Easement Premises and the condition of the Qualifying Timber are documented in the inventory of their relevant features and identified in Attachment A-3 ("Baseline Documentation"), and that this documentation provides, collectively, an accurate representation at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

EXHIBIT B

FORESTRY RIPARIAN EASEMENT TERMS AND CONDITIONS

B1 DEFINITIONS

The terms used in this Easement, including without limitation the following, are defined by the forest practices rules incorporated in Attachment B-1 to this Exhibit:

- "Danger Tree"**
- "Easement Premises"**
- "Qualifying Timber"**
- "Hazard Substances"**
- "Riparian Areas"**
- "Riparian Function"**

B2 RIGHTS OF GRANTEE ~~**[Subsection B2.4 should be included only for multiple entry Easements.]**~~

To accomplish the purposes of this Easement, the following rights are conveyed to Grantee by this Easement:

B2.1 To enforce the terms of this Easement as provided in subsection **B9**.

~~**B2.2** To enter upon the Easement Premises, or to allow Grantee's agents or any experts consulted by Grantee in exercising its rights under this Easement to enter upon the Easement Premises in order to evaluate Grantor's compliance with this Easement, and to otherwise enforce the terms of this Easement.~~

~~**B2.3** To convey, assign, or otherwise transfer Grantee's interests herein to another agency of the State of Washington, as provided for and limited by Section 504 of the Salmon Recovery Act.~~

~~**B2.4** Where harvest of Reserve Qualifying Timber is allowed during the term of this Easement, to approve Replacement Qualifying Timber that will be protected by this Easement as provided in subsection **B3.5**.~~

~~**B3 RESTRICTIONS ON GRANTOR** ***[Subsection B3.6 should be included only for multiple entry Easements.]***~~

~~**B3.1 Inconsistent Uses of Riparian Easement Premises**~~

~~Any use of, or activity on, the Easement Premises inconsistent with the purposes and terms of this Easement, including without limitation converting to a use incompatible with growing timber, is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity.~~

~~**B3.2 Property Outside the Easement Premises**~~

~~Grantor may change its use of the property on which the Easement lies to any lawful use. Grantor shall provide Grantee sixty (60) days notice prior to changing the use of the property as a courtesy to Grantee.~~

~~**B3.3 Qualifying Timber**~~

~~Grantor shall not engage in any activity which would result in the cutting of Qualifying Timber or the removal of that timber from the Easement Premises, except as provided in this Easement. The parties further agree that use, harvest, and treatment of the Qualifying Timber are restricted according to the forest practices rules in Attachment B-1.~~

~~**B3.4 Danger Trees and Salvage**~~

~~Grantor may cut a Danger Tree, which shall be left in place within the Easement Premises or moved by Grantor inside the Easement Premises. Grantor shall notify DNR within seven (7) days that a Danger Tree has been felled. Grantor shall not engage in any activities pertaining to salvage of Qualifying Timber including without limitation blowdown except as provided for in the forest practices rules.~~

~~**B3.5 Harvest of Reserve Qualifying Timber and Designation of Replacement Qualifying Timber on Riparian Area Easement Premises**~~

Grantor shall not, during the term of this Easement, harvest or remove any Reserve Qualifying Timber except as permitted under the applicable forest practices rules. Grantor shall give Grantee at least thirty (30) days written notice prior to harvest or removal of Reserve Qualifying Timber, except that where a permit or approval is required from any governmental entity, such notice shall be given thirty (30) days before submission of the application for such permit or approval. Grantor shall mark Reserve Qualifying Timber and Replacement Qualifying Timber, where Replacement Qualifying Timber is required, for review by Grantee. Grantor's thirty (30) days written notice to Grantee is effective only after both Reserve Qualifying Timber and Replacement Qualifying Timber (if required) are marked. If Grantee does not object by giving Grantor written notice within thirty (30) days of receipt of Grantor's notice, Grantor may proceed to harvest and remove the Reserve Qualifying Timber. If Grantee does object and gives Grantor written notice thereof within thirty (30) days of receipt of Grantor's notice, Grantor shall not harvest or remove Reserve Qualifying Timber until the objection is resolved. If Reserve Qualifying Timber is to be removed but Replacement Qualifying Timber is required to be left standing for the balance of the term of this Easement, then Grantor shall mark the Replacement Qualifying Timber and, if approved by Grantee, such Timber shall be considered Qualifying Timber under this Easement. A new Exhibit A shall be prepared along with a supplement to this Easement, executed by Grantor and Grantee, and recorded.

B3.6 Multiple Entry Easements

Grantor shall not, during the term of this Easement, make multiple entry harvests except as permitted under the applicable forest practices rules. Grantor shall give Grantee at least thirty (30) days written notice prior to harvest or removal of timber, except that where a permit or approval is required from any government entity, such notice shall be given thirty (30) days before submission of the application for such permit or approval. Grantor shall mark timber to be removed for review by Grantee. Grantor's thirty (30) day written notice to Grantee is effective only after the timber to be removed is marked. If Grantee does not object by giving Grantor written notice within thirty (30) days of receipt of Grantor's notice, Grantor may proceed to harvest. If Grantee does object and gives Grantor notice thereof within thirty (30) days of receipt of Grantor's notice, Grantor shall not harvest until the objection is resolved.

B4 RESERVED RIGHTS

Other than specifically provided herein, Grantor is not restricted in its use of the Easement Premises.

B5 PUBLIC ACCESS

No right of public access to or across, or any public use of, the Easement Premises or the property on which it lies is conveyed by this Easement.

B6 COSTS, LIABILITIES, TAXES, AND INDEMNIFICATION

B6.1 Costs, Legal Requirements, and General Liabilities

Except as is expressly placed on Grantee herein, Grantor retains full responsibility for the Qualifying Timber and Easement Premises. Grantor shall keep the Qualifying Timber and Easement Premises free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor remains responsible for obtaining all permits required by law.

B6.2 Taxes and Obligations

Grantor shall remain responsible for payment of taxes or other assessments imposed on the Easement Premises or the Qualifying Timber. Grantor shall furnish Grantee with satisfactory evidence of payment upon request.

B6.3 Hold Harmless

~~B6.3.a Grantor~~

~~To the extent permitted by law, Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its employees, agents, and assigns from and against all liabilities, penalties, costs, charges, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including without limitation reasonable attorneys' fees arising from or in any way connected with: (a) Injury or death of any person or any physical damage to property resulting from any act or omission, or other matter occurring on or relating to the Easement Premises or Qualifying Timber, caused solely by Grantor; (b) a breach by Grantor of its obligations under subsection B3; (c) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law or requirement by Grantor in any way affecting, involving, or relating to the Easement Premises or the Qualifying Timber; (d) the release or threatened release onto the Easement Premises of any substance now or hereinafter classified by state or federal law as a hazardous substance or material caused solely by Grantor.~~

~~B6.3.b Grantee~~

~~To the extent permitted by law, Grantee hereby releases and agrees to hold harmless, indemnify and defend Grantor and its employees, agents, and assigns from and against all liabilities, penalties, costs, charges, losses, damages, expenses, causes of action, claims, demands, orders, judgments or administrative actions, including without limitation reasonable attorneys' fees arising from or in any way connected with: (a) Injury or death of any person or any physical damage to property resulting from any act or omission, or other matter occurring on or relating to the Easement Premises or Qualifying Timber, caused solely by Grantee; or (b) the release or threatened release onto the Easement Premises of any substance now or hereinafter classified by state or federal law as a hazardous substance or material caused solely by Grantee.~~

~~B7 SUBSEQUENT TRANSFERS~~**~~B7.1 Grantee~~**

~~Grantee may assign, convey, or otherwise transfer its interest as evidenced in this Easement, but only to another agency of the State of Washington under any circumstances in which it determines, in its sole discretion, that such transfer is in the best interests of the state. Grantee shall give written notice to Grantor of the same within thirty (30) days of such conveyance, assignment, or transfer (provided that failure to give such notice shall not affect the validity of the assignment, conveyance, or transfer).~~

~~B7.2 Grantor~~

~~Grantor may assign, convey, or otherwise transfer without restriction its interest in the Easement Premises or the Qualifying Timber identified in Exhibit A hereto. Grantor agrees to incorporate the restrictions of the Easement in any deed or other legal instrument by which Grantor divests itself of all or a portion of its interests in the Easement Premises or Qualifying Timber. Grantor shall give written notice to the Grantee of the assignment, conveyance, or other transfer of all or a portion of its interest in the Easement Premises or the Qualifying Timber within thirty (30) days of such conveyance, assignment, or transfer (provided that failure to give such notice shall not affect the validity of the assignment, conveyance, or transfer).~~

~~B7.3 Termination of Grantor's Rights and Obligations~~

~~The Grantor's personal rights and obligations under this Easement terminate upon transfer of the Grantor's interest in the property on which the Easement lies or the Qualifying Timber, except that liability under the Easement for acts or omissions occurring prior to transfer shall survive transfer.~~

~~B8 DISPUTE RESOLUTION~~

The parties may at any time by mutual agreement use any nonbinding alternative dispute resolution mechanism with a qualified third party acceptable to Grantor and Grantee. Grantor and Grantee shall share equally the costs charged by the third party. The existence of a dispute between the parties with respect to this Easement, including without limitation the belief by one party that the other party is in breach of its obligations hereunder, shall not excuse either party from continuing to fully perform its obligations under this Easement. The dispute resolution provided for in this subsection is optional, not obligatory, and shall not be required as a condition precedent to any remedies for enforcement of this Easement.

~~B9 ENFORCEMENT~~**~~B9.1 Remedies~~**

Either party may bring any action in law or in equity in the superior court for the county in which the Easement Premises are located or in Thurston County (subject to venue change under law) to enforce any provision of this Easement, including without limitation, injunctive relief (permanent, temporary, or ex parte, as appropriate) to prohibit a breach of this Easement, enforce the rights and obligations of this Easement, restore Qualifying Timber cut or removed in violation of this Easement or for damages. Grantee may elect to pursue some or all of the remedies provided herein.

~~B9.1.a Damages and Restoration~~

If Grantor cuts or removes (or causes another to cut or remove) Qualifying Timber from the Easement Premises in violation of this Easement, Grantee shall be entitled to damages, or restoration. Damages for the cutting of Qualifying Timber or the removal of Qualifying Timber from the Easement Premises in violation of the terms of this Easement may be up to triple stumpage value times the proportion of the original compensation. The maximum amount of damages shall be calculated according to the following formula:

Where:

Sv = The stumpage value of the Qualifying Timber that is cut or removed from the Easement Premises at the time the damage was done;

C = The compensation paid by the state to the Grantor at the time the Easement became effective;

Vq = The original value of Qualifying Timber at the time the Easement became effective as calculated in WAC 222-21-050.

$$\text{Maximum Damages} = 3 * Sv * (C/Vq)$$

In addition the Grantor shall pay interest on the amount of the damages at the maximum interest rate allowable by law.

Grantee's rights to damages under this section shall survive termination. Restoration of Qualifying Timber may include either replanting or replacing trees or both, as determined by Grantee, in its sole discretion, to be appropriate. Replanting shall be by nursery transplant seedlings approved by Grantee with subsequent silvicultural treatment including without limitation weed control and fertilization approved by Grantee. Replacing trees shall be accomplished by designation of replacement trees of the size and species acceptable to Grantee. If replacement trees are designated to replace the Qualifying Timber cut or removed in violation of the terms of this Easement, the designated trees shall be thereafter treated as Qualifying Timber under this Easement.

~~**B9.1.b** Injunctive Relief.~~ Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement may be inadequate and that Grantee may be entitled to injunctive relief, both prohibitive and mandatory, in addition to other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies.

~~**B9.1.c** Relationship to Remedies in Other Laws.~~ The remedies provided for in this section are in addition to whatever other remedies the state may have under other laws including without limitation the Forest Practices Act. Nothing in this Easement shall be construed to enlarge, diminish or otherwise alter the authority of the state to administer state law.

~~**B9.2** Costs of Enforcement~~

The costs, including reasonable attorneys' fees, of enforcing this Easement shall be borne by Grantee unless Grantee prevails in a judicial action to enforce the terms of this Easement, in which case costs shall be borne by Grantor, provided that nothing herein shall make Grantor liable for costs incurred by Grantee in taking enforcement actions pursuant to other state laws.

~~**B9.3** Forbearance/Waiver~~

Enforcement of this Easement against the Grantor is at the sole discretion of the Grantee, and vice versa. Any forbearance by either party to exercise its rights hereunder in the event of a breach by the other party shall not be deemed a waiver by the forbearing party of the term being breached or of a subsequent breach of that term or any other term or of any other of the forbearing party's rights under this Easement.

~~**B9.4** Waiver of Certain Defenses~~

Grantor hereby waives any defense of laches, estoppel, or prescription.

~~**B9.5** Acts Beyond Grantor's Control~~

Nothing herein shall be construed to entitle Grantee to bring any action or claim against Grantor on account of any change in the condition of the Easement Premises or of the Qualifying Timber that was not within Grantor's control, including without limitation fire, flood, storms, insect and disease outbreaks, earth movement, or acts of trespassers, that Grantor could not reasonably have anticipated and prevented, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Premises or Qualifying Timber resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

~~**B10** CONSTRUCTION AND INTERPRETATION~~

~~**B10.1** Controlling Law~~

Interpretation and performance of this Easement shall be governed by the laws of the State of Washington.

B10.2 Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The parties acknowledge that each has had an opportunity to have this Easement reviewed by an attorney and agree that the terms shall not be presumptively construed against either party.

B10.3 Captions

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

B11 AMENDMENT

This Easement may be jointly amended. The amendments shall be in writing and signed by authorized representatives. Grantee shall record any such amendments in a timely fashion in the official records of _____ County, Washington. All amendments shall be consistent with the purposes of this Easement.

B12 TERMINATION

Grantee may unilaterally terminate this Easement if it determines, in its sole discretion, that termination is in the best interest of the State of Washington. Grantee shall provide thirty (30) days written notice to Grantor of such termination.

B13 EXTINGUISHMENT

If circumstances arise that render the purpose of this Easement impossible to accomplish, this Easement can only be extinguished, in whole or in part, by mutual agreement of the parties or through judicial proceedings brought by one of the parties. Grantee shall be entitled to the value of the Easement as such value is determined pursuant to forest practices rules governing extinguishment or eminent domain, if no rule for extinguishment exists.

B14 CONDEMNATION

If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, Grantee shall be entitled to compensation in accordance with the forest practices rules.

B15 NOTICE

Notices given pursuant or in relation to this Easement shall be in writing and delivered personally or by first class mail (postage prepaid), addressed as follows:

(a) If to Grantor:

(b) If to Grantee:

Washington State Department of Natural Resources
 Small Forest Landowner Office
 DNR Forest Practices Division
 P.O. Box 47012
 Olympia, WA 98504-7012

If either party's address changes during the term of this Easement, that party shall notify the other party of the change.

Any notice required to be given hereunder is considered as being received: (i) If delivery in person, upon personal receipt by the person to whom it is being given; or (ii) if delivered by first class U.S. mail and properly addressed, three (3) days after deposit into the U.S. mail; or (iii) if sent by U.S. mail registered or certified, upon the date receipt is acknowledged by the recipient.

~~B16~~ RECORDATION

Grantee shall record this instrument in timely fashion in the official records of County, Washington and may rerecord it at any time as may be required to preserve its rights in this Easement.

~~B17~~ GENERAL PROVISIONS

~~B17.1~~ Severability

If any provision in this Easement, or the application hereof to any person or circumstance, is found to be invalid, the remainder of this Easement, or the application hereof to other persons or circumstances shall not be affected thereby and shall remain in full force and effect.

~~B17.2~~ Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to the Easement. This instrument supersedes all other and prior discussions, negotiations, understandings, or agreements of the parties. No alteration or variation of this instrument shall be binding unless set forth in an amendment to this instrument consistent with subsection **~~B11~~**.

~~B17.3~~ Successors and Assigns

The covenants, terms, conditions, and restrictions of this Easement shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective successors and assigns and shall continue as a servitude running with the property on which the Easement lies for the term of this Easement set forth in subsection **~~2.1~~**.

~~B17.4~~ No Forfeiture

Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

B17.5 Counterparts

The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original as against the party that has signed it. In the event of any disparity between counterparts produced, the recorded counterpart shall be controlling.

B17.6 References to Statutes and Rules

Except as otherwise specifically provided, any references in this Easement to any statute or rule shall be deemed to be a reference to such statute or rule in existence at the time the action is taken or the event occurs.

B17.7 Adherence to Applicable Law

Any activity pertaining to or use of the Easement Premises or Qualifying Timber shall be consistent with applicable federal, state, or local law including chapter 76.09 RCW, the Forest Practices Act, chapter 36.70A RCW, the Growth Management Act, chapter 90.58 RCW, the Shoreline Management Act, chapter 77.55 RCW, Construction Projects in State Waters Act ("Hydraulics Code"), the Endangered Species Act (16 U.S.C. Sec. 1531, et seq.), and the Clean Water Act (33 U.S.C. Sec. 1251, et seq.), and rules adopted pursuant to these statutes (including all rules adopted under Section 4(d) of the Endangered Species Act.))

(1) Forest practices application. Prior to submitting a forestry riparian easement application, the landowner must have an approved forest practices application or an application that was disapproved because of forests and fish rule restrictions.

(2) Forestry riparian easement application. The landowner will provide the following ~~((items are required for))~~ information in a ~~((complete))~~ forestry riparian easement application:

(a) ~~((A certification by the small forest landowner that he or she meets the qualifications of a small forest landowner;))~~ County tax parcel numbers of the property in the proposed easement premises;

(b) ~~A list of all forest practices application numbers ((for the commercially reasonable harvest units and the associated qualifying timber on the property)) of approved and/or disapproved forest practices applications;~~

(c) ~~The ((dates and areas of all planned future harvest entries on the easement premises;)) landowner's signature certifying that the landowner meets the characteristics of a qualifying small forest landowner and documenting that the landowner is willing to sell or donate such easements to the state; and~~

(d) ~~((A preliminary litigation guarantee or similar report from a title company for the tax parcels that contain the easement premises;~~

(e) A description of past and current uses of the easement premises;

(f) Any information not specifically listed that the small forest landowner office needs to evaluate the easement and eligibility of the small forest landowner.) Documentation that qualifying timber is harvested, cannot be harvested because of forests and fish rule restrictions, or is uneconomic to harvest because of forests and fish rule restrictions. See WAC 222-21-032 for additional information about these categories.

The small forest landowner office may require additional information from the applicant to process the application and evaluate the eligibility of the proposed easement premises and the landowner.

(3) Baseline documentation. The small forest landowner office will gather baseline documentation ~~((must))~~ that will describe the features and current uses on the proposed forestry riparian easement premises and the qualifying timber. The ~~((information provided by the small forest landowner in subsection (2) of this section is considered part of the baseline))~~ documentation ~~((In addition, the department will provide documentation that includes, but is not limited to))~~ will include, but not be limited to:

(a) A summary of cruise information consistent with the standards and methods in WAC 222-21-040; and

(b) An assessment to determine site condition and potential liabilities associated with the proposed riparian easement ((see the board manual section 17 for procedures for conducting assessment); and

(c) ~~A description of the easement consistent with WAC 222-21-035))~~ premises.

(4) Forestry riparian easement contract. The forestry riparian easement contract will identify the parties, describe the land, locate the easement, state the terms and conditions, and provide a statement of consideration. The contract will include language consistent with RCW 76.13.120(5) concerning the preservation of all lawful uses of the easement premises by the landowner. The easement will be for a term of fifty years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office.

(5) Land description standards.

(a) The forestry riparian easement contract will include a description of the easement premises using a land survey provided by the department unless the cost of securing the survey would be unreasonable in relation to the value of the easement conveyed.

(b) When the small forest landowner office determines a land survey is not required, the department will prepare a written description that suitably and accurately depicts the location of the easement conveyed, or the department may consider other methods, such as producing a map, to accurately describe the easement premises.

NEW SECTION

WAC 222-21-031 Forestry riparian easement application review and processing. After the small forest landowner office makes a preliminary determination of eligibility:

- (1) The department will verify the timber harvest associated with the easement is complete.
- (2) The department will submit the list of eligible projects to the state legislature for budget approval.
- (3) The landowner or the landowner's representative will mark the boundary of the area containing the qualifying timber.
- (4) The department will verify eligibility of qualifying timber.
- (5) The department will perform a timber cruise on the qualifying timber to establish the compensation value.
- (6) The department will inform the landowner in writing of the easement value. All compensation and reimbursement is subject to available funding.
- (7) If an application is ineligible, the department will notify the landowner in writing the reasons why. The department will return ineligible applications to landowners.

NEW SECTION

WAC 222-21-032 Eligibility criteria. (1) Qualifying small forest landowners must complete a timber harvest to be eligible for a forestry riparian easement, unless a commercially reasonable harvest is not possible according to subsection (5) of this section or the only timber available to harvest meets the criteria of uneconomic to harvest according to subsection (6) of this section.

(2) The easement premises cannot contain unacceptable liabilities as determined by the small forest landowner office. Unacceptable liabilities include, but are not limited to, the presence of hazardous substances on the land or other conditions that may create a liability to the department, any existing uses of the property that may jeopardize the protection of the easement premises and qualifying timber, and situations in which the applicant is unwilling or unable to provide reasonable protection against financial loss to the state.

(3) Where more than one person has an interest in property to be covered by a forestry riparian easement, all persons holding rights to control or affect the easement premises and qualifying timber must execute the easement documents or otherwise subordinate their interest to the easement interest being acquired by the state. This includes tenants in common, joint tenants, holders of reversionary interests, lien holders, and mortgages.

(4) **Commercially reasonable harvest.** The small forest landowner office will consider the following criteria to determine if an area covered by a forest practices application

involves a commercially reasonable harvest. The proposed harvest must meet all five of the following requirements:

- (a) The harvest unit is immediately adjacent to or physically connected to qualifying timber;
- (b) The application is for a forest practice involving a timber harvest and the harvest would not result in a conversion to a use other than commercial timber operation;
- (c) The landowner is not eligible for the twenty acre exemption under WAC 222-30-023;
- (d) The value of the timber in the harvest unit, excluding qualifying timber, equals or exceeds one thousand dollars, which is the minimum required by department of revenue for taxing purposes; and
- (e) The value of the taxable harvest equals or exceeds the value of the qualifying timber established under WAC 222-21-045 unless otherwise approved by the small forest landowner office.

(5) **Commercially reasonable harvest is not possible.** The small forest landowner office will consider the following criteria to determine if a forest practices application for harvest may qualify for the forestry riparian easement program because it involves an area where a commercially reasonable harvest is not possible. The proposed harvest must meet all four of the following requirements:

- (a) The forest practices application has been disapproved because the area covered by the application cannot be harvested due to forests and fish rule restrictions;
- (b) The forest practices application involves a proposed timber harvest and the harvest would not result in a conversion to a use other than commercial timber operation;
- (c) The landowner is not eligible for the twenty acre exemption under WAC 222-30-023; and
- (d) The value of the qualifying timber equals or exceeds one thousand dollars, which is the minimum required by the department of revenue for taxing purposes.

(6) **Uneconomic to harvest.** The small forest landowner office will use the following criteria to determine whether timber is qualifying timber because the forests and fish rules made it uneconomic to harvest. The proposed harvest must meet all four of the following requirements:

- (a) The timber could have been included in a commercially reasonable harvest unit if there were no additional requirements imposed by the forests and fish rules;
- (b) The area is not reasonably accessible economically because of requirements imposed by the forests and fish rules;
- (c) There is no reasonable unit size alternative which, if used, would make the area economical to harvest; and
- (d) The cost to access the harvest unit plus the cost to harvest would equal or exceed thirty-five percent of the stumpage value in the portion of the unit considered uneconomic. The small forest landowner office will determine these costs and values consistent with WAC 222-21-045. Costs include harvest, construction of nonpermanent roads and/or water crossing structures, and associated expenses. When using the small harvester tax return method to calculate stumpage values and allowable costs, the landowner may include actual timber appraisal and sale layout costs incurred as part of the cost calculations.

AMENDATORY SECTION (Amending WSR 03-06-039, filed 2/26/03, effective 3/29/03)

WAC 222-21-040 Timber cruises. (1) This section ~~((is designed to establish methods and standards for cruises of qualifying timber for the proposed forestry riparian easements for purposes of establishing the compensation. It))~~ applies only to timber cruises related to the ((department, small forest landowners, and the small forest landowner office in connection with the)) forestry riparian easement program to establish easement compensation.

(2) ~~((The following standards will be used for the))~~ A timber cruise((s:)) is required to determine the volume by species and grade to accurately determine the value of the qualifying timber.

(a) ~~((The purpose of the timber cruise is to determine the volume by species and grade sufficient to value the qualifying timber.~~

(b) ~~Additional trees left voluntarily by the small forest landowner may be noted, but are not included in the cruise volume.~~

(c) ~~The cruise method will be a ((+00)) one hundred percent inventory of qualifying timber on the proposed easement premises. The inventory will include species, diameter class, grade, and any other information necessary to determine ((valuation of)) a value for the ((easement)) qualifying timber. ((See the board manual for specific cruise standards.))~~

(d) ~~(b) A sampling cruise method may be used ((for easement premises)) under certain circumstances((See the board manual section 17 for standards for sampling cruise method.))~~ such as where easement premises are greater than ten acres or where the forest trees are homogeneous.

(3) ~~Additional trees left voluntarily by the small forest landowner may be noted but will not be included in the cruise volume.~~

AMENDATORY SECTION (Amending WSR 03-06-039, filed 2/26/03, effective 3/29/03)

WAC 222-21-045 Valuation. (1) ~~((This section is designed to establish methods and standards for valuation of forestry riparian easements for purposes of establishing the compensation. It applies only to the department, small forest landowners, and the small forest landowner office in connection with the forestry riparian easement program.~~

(2) ~~The small forest landowner office will calculate the ((fair market value of the)) compensation amount for forestry riparian easements ((as of the date of receipt of the forest practices application associated with the qualifying timber, or the date the landowner provides written notification to the small forest landowner office that the harvest is to begin. Data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091 will be used and adjusted to the applicable date. For easements with an approved forest practices application, the small forest landowner must indicate whether valuation will be calculated using method (a) or (b) of this subsection. Only method (a) of this subsection is available for qualifying timber for which an approved application for timber harvest cannot be obtained because of restrictions under the forest practices rules under~~

~~WAC 222-21-061. In either method (a) or (b) of this subsection, the time adjustment index will be based on log price changes. The small forest landowner office will determine the specific log species and/or sorts and the log price reporting service to use after consultation with the small forest landowner advisory committee established under RCW 76.13.110(4) and the department of revenue. The small forest landowner office will generate an index that reflects the time adjustments using information and data obtained from a log price reporting service determined by the department in consultation with the small forest landowner committee)) by determining a value for the qualifying timber. The office will use data gathered from or adjusted to the date the office received the complete forestry riparian easement application. The office will use the stumpage value determination method described in (a) of this subsection for qualifying timber that cannot be harvested because of forests and fish rule restrictions. For qualifying timber approved for harvest, the office will use both the stumpage value determination method and the small harvester tax return method to determine the highest compensation amount for the landowner.~~

(a) **Stumpage value determination method.** The small forest landowner office will create and maintain value tables to determine stumpage value of the qualifying timber. These tables will be created using a method coordinated with the department of revenue. The values will closely approximate the stumpage value for logs ~~((that would be sold in the ordinary course of business for))~~ on the date ((of receipt of)) the ((forest practices)) office received a complete forestry riparian easement application. The landowner ((must)) will provide ((the small forest landowner office with)):

(i) The reference for the stumpage value table and any other needed information for use of the table ~~((see the board manual section 17 for details)); and~~

(ii) Any information the ~~((small forest))~~ landowner would like the ~~((department))~~ office to consider in its cruise and valuation of the qualifying timber.

(b) **Small harvester tax return method.**

(i) The landowner must provide comprehensive mill or buyer information ((to the department on the sale breakdown. This includes:

(i) The volume and scaling bureau log grades of each species harvested;

(ii) The amount received for each species; and

(iii) The actual harvesting and marketing costs as defined in the department of revenue small harvester instructions.)) for each harvest unit associated with the forestry riparian easement including:

(A) The delivered value by species;

(B) The total volume by species; and

(C) The actual harvesting and marketing costs as defined in the department of revenue small harvester instructions.

This information must be verifiable as proceeds from the timber harvests from documents such as mill receipts and/or forest excise tax returns. If the small forest landowner office does not receive a comprehensive packet of mill or buyer information or is not satisfied with the source of the documentation, the office will determine the qualifying timber value using the stumpage value determination method.

(ii) The office will use a time adjustment index to determine the qualifying timber value based on the date the office received the complete forestry riparian easement application. The office will generate a time adjustment index for each harvest associated with the easement based on log price changes.

(iii) The ((price received for the timber is)) office will determine the adjusted ((to the applicable date using the time adjustment index and then)) stumpage value by subtracting the average logging and hauling cost per thousand board feet (MBF) ((is subtracted to arrive at the stumpage value)) from the value of the time adjusted mill or buyer information. The office will then determine the value of the qualifying timber ((is determined)) by multiplying the time adjusted stumpage value of each species in the harvest unit by the net volume for each corresponding species in the inventory of qualifying timber. ((A residual value approach is used to determine the value of species in the easement, which are not present in the harvest area. The prices for species not present in the harvest unit are based on the delivered log price report approved by the small forest landowner office that corresponds closest to the date of the forest practices application, minus the average logging and hauling costs.

(3) Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.))

(iv) The timber species that exist in the easement premises will be valued, not the species in the harvest area. The timber species in the easement premises will be valued by multiplying the determined cruise volume by the appropriate stumpage value of those species shown on the appropriate table used for timber harvest excise tax purposes per RCW 84.33.091.

(2) **Determining the forestry riparian easement compensation.** The small forest landowner office uses a "high impact regulatory threshold" to calculate the compensation offered for a forestry riparian easement. This threshold is determined by multiplying the value of all timber covered under a forest practices application by 19.1 percent for timber in western Washington and 12.2 percent for timber in eastern Washington.

(a) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application is equal to or less than the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be fifty percent of the qualifying timber value.

(b) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application exceeds the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be more than fifty percent of the qualifying timber value up to the applicable high impact regulatory threshold, plus full compensation (one hundred percent) for the qualifying timber value that exceeds the high impact regulatory threshold. This is mathematically represented as follows:

Where:

Vq = the value of qualifying timber;

Vh = the value of harvested timber; and

t = the high impact of regulatory threshold (19.1 percent for western Washington, 12.2 percent for eastern Washington);

$$\text{The compensation for easement} = ((Vq/(Vq + Vh)) - t) * (Vq + Vh) + (t * (Vq + Vh)/2)$$

NEW SECTION

WAC 222-21-048 Reimbursement of costs to the small forest landowner. The state of Washington will reimburse landowners for actual costs incurred toward identifying qualifying timber. Costs can include one or more of the following:

- (1) Determining and marking streamside buffers;
- (2) Marking the qualifying timber; and
- (3) The cost of the portion of a geotechnical report that is applicable to the area determined to contain qualifying timber.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-21-050 Payment of compensation and reimbursement to the small forest landowner. (1) ((The compensation offered to the small forest landowner will be 50% of the fair market value of the qualifying timber established under the process described in WAC 222-21-045, plus the compliance and reimbursement costs, subject to the following exceptions:

(a) If the high impact regulatory threshold is exceeded for an area covered by an approved forest practices application, then the compensation offered will be increased to 100% for the value of the qualifying timber where the high impact regulatory threshold is exceeded. Use the following calculation:

Where:

Vq = value of qualifying timber;

Vh = value of harvested timber;

t = high impact of regulatory threshold (19.1% for Western Washington, 12.2% for Eastern Washington);

TV = total value of all timber covered under FPA = Vq + Vh; and

HIO = high impact override = (Vq/TV) - t;))

((STRICKEN GRAPHIC

$$\text{Compensation for easement} = (\text{HIO} * \text{TV}) + \left(\frac{t * \text{TV}}{2} \right)$$

STRICKEN GRAPHIC))

((See Section 17 of board manual for example.

(b)) All compensation and reimbursement to the small forest landowner is subject to available funding.

(2) If funding is not available, the small forest landowner office will maintain a priority list for compensation and reim-

bursement to the landowner. Priority will be based on ((a)) the date ((of receipt of forest practices application and (b) date of receipt of completed harvest status questionnaire.

(3) Reimbursement costs for easement layout are subject to the work being acceptable to the department. The small forest landowner office shall determine how the reimbursement costs will be calculated. The small forest landowner office will send the small forest landowner a notice of compensation decision within 60 days of completion of the timber cruise.

(4) Compensation for a forestry riparian easement associated with an approved forest practices application will not be paid until:

(a) The department has documented completion of harvest;

(b) The department has verified that there has been compliance with the rules requiring leave trees in the easement area;

(c) Any dispute over the amount of compensation or eligibility or other matter involving the forestry riparian easement has been resolved; and

(d) The forestry riparian easement has been executed and delivered to the department.

(5)) the small forest landowner office received the complete forestry riparian easement application. In instances where two easement applications are received on the same date, priority will be based on the date the department received a complete forest practices application associated with the easement.

(3) The small forest landowner office will offer compensation for the easement in a purchase and sale agreement. The small forest landowner will accept or reject the conditions of the purchase and sale agreement in writing and submit the written acceptance or rejection to the small forest landowner office.

(4) Compensation for ((a)) the forestry riparian easement ((for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under these rules adopted under RCW 76.09.055 or 76.09.370)) and reimbursement of landowner costs will ((not)) be paid ((until)) after:

(a) The department has verified that ((there has been compliance with)) the landowner has no outstanding violations under chapters 76.09 or 76.13 RCW or any associated forest practices rules ((requiring leave trees in the easement area)); ((and))

(b) Any dispute over the amount of compensation or eligibility or other matter involving the ((forestry riparian)) easement has been resolved; and

(c) The small forest landowner office has sent a forestry riparian easement ((has been executed and)) contract to the landowner, the landowner has signed the contract, and the landowner has delivered it to the department.

(5) Compensation for any qualifying timber located on potentially unstable slopes or landforms will not exceed a total of fifty thousand dollars during any biennial funding period.

NEW SECTION

WAC 222-21-055 Reimbursement to the department. If, within the first ten years after receipt of compensation for a forestry riparian easement, a small forest landowner sells the land on which a forestry riparian easement is located to a landowner that does not have the characteristics of a qualifying small forest landowner, then the selling small forest landowner must reimburse the state for the full compensation received for the easement and the full amount of the costs incurred to identify the qualifying timber.

If the land on which the easement is located consists of multiple land parcels and the selling small forest landowner sells parcels that consist of only a portion of the easement, the small forest landowner office will calculate reimbursement amount. The calculation will be based on the ratio of qualifying timber volume within the portion of the easement on the land that is sold to the total volume of qualifying timber. The selling small forest landowner must make full payment for this reimbursement within one year of sale of the land the easement occupies. The department will continue to hold, in the name of the state, the forestry riparian easement for the full term of the easement.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-21-070 Blowdown and salvage. After execution of a forestry riparian easement, qualifying timber may not be salvaged((, including removal of blowdown,)) without prior written permission from the department. Prior to removal, the small forest landowner office and the ((small forest)) landowner must negotiate the terms of removal and reimbursement to the state, if any. Qualifying timber that blows down off the easement premises that presents a nuisance may be moved back onto the easement premises without permission from the department.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-21-080 Eminent domain. If a forestry riparian easement is taken, in whole or in part, by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, the state will receive compensation for its remaining interest in the easement based upon the following formula:

Where:

C((--))≡ Is the compensation to the department for the state's remaining interest in the easement;

O((--))≡ Is the original compensation for the easement paid to the small forest landowner by the state;

P((--))≡ Is the proportion of the forestry riparian easement extinguished or terminated;

CPIo((--))≡ Is the ((U.S.)) Consumer Price Index for all Urban Consumers as published by the Bureau of Labor Statistics for the month in which the original compensation was determined;

$CPI_c(-)$ = Is the ((U.S.)) Consumer Price Index for all Urban Consumers as published by the Bureau of Labor Statistics for the most recent month available at the time the easement is terminated or extinguished;

$I(-)$ = Is the rate of return on 30 year treasury bonds, as reported by the Federal Reserve Statistical Release H15 less the rate of increase in the Consumer Price Index for all Urban Consumers as published by the U.S. Department of Labor Bureau of Labor Statistics for the previous 12 months;

$R(-)$ = Is the number of years remaining on the easement at the time of extinguishment or termination.

$$C = *P*(CPI_c/CPI_o)*(1-(1/(1+I))^{(R)})/(1-(1/(1+I))^{50})$$

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-21-090 Internal department of natural resources review of small forest landowner office (~~compensation~~) decisions. ~~((Within 30 days after the date of the notice of compensation decision, the small forest landowner may submit a written request for review to the supervisor of the department or his or her designee. The request for review must identify the issue being raised and provide any supporting documentation. The supervisor will issue a written response within 30 days.))~~ Any person who wishes to appeal written decisions of the small forest landowner office pertaining to application eligibility, easement valuation, and related decisions may submit a request for review within thirty days after the date of the small forest landowner office's written decision. The request for review must identify the issue being raised and provide any supporting documentation. The supervisor of the department or designee will issue a written response within thirty days of receipt of the request for review and this response will constitute the department's final decision.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 222-21-020	Criteria for accepting riparian easement.
WAC 222-21-035	Description of easement.
WAC 222-21-060	Commercially reasonable harvest.
WAC 222-21-061	Criteria when commercially reasonable harvest is not possible.
WAC 222-21-065	Uneconomic to harvest.

WSR 12-05-108

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed February 22, 2012, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-082.

Title of Rule and Other Identifying Information: The university is updating the campus traffic and parking regulations for WSU Vancouver, chapter 504-19 WAC.

Hearing Location(s): Lighty 401, WSU Pullman, Pullman, Washington and VCLS 130, WSU Vancouver, Vancouver, Washington, on March 29, 2012, at 4:00 p.m.

Date of Intended Adoption: May 6, 2012.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail prf.forms@wsu.edu, fax (509) 335-3969, by March 29, 2012.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by March 27, 2012.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update the campus traffic and parking regulations for WSU Vancouver.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Stephenson, Lieutenant, WSU Vancouver Police Department, Public Safety, Finance and Operations, Vancouver Administration 160, Vancouver, WA 98686-9600, (360) 546-9004; and Enforcement: Lynn Valenter, Vice Chancellor, Finance and Operations, and Interim Chancellor, WSU Vancouver, Vancouver Administration 226, Vancouver, WA 98686-9600, (360) 546-9590.

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.

February 22, 2012

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

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-250 Motorcycles and mopeds. (1) The general traffic regulations applicable to motor vehicles apply to motorcycles and mopeds. Motorcycles or mopeds may not be driven on sidewalks or in pedestrian mall areas. Owners of motorcycles and mopeds are responsible for all violations issued.

(2) The university classifies mopeds and motorcycles by engine displacement (also referred to as engine size). This definition applies only to university property and does not replace or supersede the definitions established by the state of Washington for licensing purposes.

(3) Motorcycles and mopeds: Motorcycles and mopeds may park only in spaces which are marked by signs or the letter "M" painted on the parking surface. Motorcycles and mopeds parking in such designated areas must display a valid WSUV motorcycle permit during posted times. During all other times, these spaces are restricted to use by motorcycles and mopeds only. To park a motorcycle or moped in nonmotorcycle parking spaces, a full-price vehicle permit must be displayed in an approved motorcycle permit holder. Approved motorcycle permit holders may be signed out from parking services at the time of permit purchase. Issued permit holders must be returned to parking services within two weeks of the permit's expiration date or an administrative service fee is charged to the permit user's account.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-520 Parking permits—Form and display. All

parking permits must be displayed in the approved position on the vehicle with permit numbers and relevant dates visible. Vehicles with permits which are not displayed in accordance with the provisions of this section are subject to parking tickets for the violation of improperly displaying a permit, or for the violation of no parking permit if a valid permit cannot be verified from the exterior of the vehicle.

(1) Autos and trucks:

(a) Hanging permits, both annual and daily, must be displayed by hanging the permit from the rear-view mirror post or laying the permit on the dashboard with the proof of payment and valid dates visible from the exterior of the vehicle.

(b) Permits mounted solely by suction cup and permit decals directly affixed to the windshield must be displayed on the front windshield at the lower left corner (driver's side). ~~((Decals must be mounted completely by means of their own adhesive (not by tape).))~~

(2) Motorcycles and mopeds: Motorcycle and moped permits must be mounted completely by means of their own adhesive and prominently displayed on the left rear side of the vehicle or on top of the rear tail light.

AMENDATORY SECTION (Amending WSR 09-11-069, filed 5/14/09, effective 7/1/09)

WAC 504-19-560 Other parking permits—Availability and use. (1) Visitor permits. Visitor permits may be used only by bona fide visitors as defined by this chapter. Use by any other person constitutes illegal use of a parking permit. Visitor permits are valid in any zone and parking spaces signed for visitors only. Visitor permits are not valid at meters or restricted spaces.

(2) Golden cougar permits. Golden cougar permits are special visitor permits that are issued to retired staff in recognition of their service without additional cost. They are issued on an annual basis and are valid in any zone. Staff who are employed by the university or other entities located on campus after formal retirement are not eligible to use a golden cougar permit in lieu of a regular paid zone permit.

(3) President's associates decals. President's associates decals are issued to eligible members of the Washington

State University foundation. Use of these decals for parking shall be in accordance with a separate agreement between WSU and the WSU foundation. However, WSU faculty, staff, and students may not use a president's associates decal or any other parking benefit instrument in lieu of a paid zone permit.

(4) Conference permits. Conference permits are available to visitors who participate in conferences held on the WSUV campus. They are available on a daily basis only. Conference permits are valid ~~((in any assigned zone))~~ as marked on the issued permit.

(5) Motorcycle permits. Motorcycle permits are valid within boundaries of areas specifically posted and/or marked for motorcycle permits.

(6) Construction permits. A construction permit is issued to personnel who are working on a construction site on campus. Construction permits are assigned to a specific parking area.

(7) Carpool. Upon application to WSUV parking services, a bona fide carpool as defined by the campus policies and procedures is given preference in the assignment of parking zones, and issued a permit that facilitates the carpool. Obtaining or using a carpool permit under false pretenses constitutes the illegal use of a permit.

(8) Commercial permits. Commercial permits are issued to vendors, suppliers, and service representatives of outside companies performing a service for the university. Commercial permits are valid in zones and areas indicated on the permit.

(9) Departmental permits. Departmental parking permits are available for use by department employees who need to use their personal vehicles for university business. Departmental permits are available in different forms and are valid at parking meters, service zones, orange, green, red, and gray permit zones, and pay parking facilities. Departmental permits are not valid in reserved spaces. The use of departmental permits for anything other than official departmental business is prohibited by the State Ethics Act.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-580 Special indicator decals and hangers. Special indicator decals or hangers may be issued to staff and student permit holders who have otherwise valid parking permits in the following cases:

(1) A "service indicator decal or hanger" is valid typically for a maximum of ~~((fifteen))~~ thirty minutes in a marked service zone. A "mall service" indicator is valid typically for a maximum of ~~((fifteen))~~ thirty-minute parking in the pedestrian mall. ~~((These are available to staff or students who must use a private vehicle for university business.))~~ If the indicator is needed for longer than thirty minutes, the issued permit is subject to the current daily rate for parking on the WSUV campus unless a parking permit valid for that time period is already present in the vehicle.

(2) Reserved parking indicator decals and hangers which are valid in parking spaces that are signed for the corresponding permit and indicator.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-600 Parking permits for persons with disability. (1) The provisions of this chapter cover the purchase and display of parking permits and the payment of fees and fines associated with parking for persons with disability.

(2) For the purpose of this chapter, persons with disability shall refer to a person or persons with disability who qualify for a state-issued persons with disability parking identification and permit. Use of disability accommodation parking at WSU Vancouver also requires payment for parking in the form of a WSUV parking permit or receipt of payment.

(3) The university uses the state persons with disability parking permit system to determine eligibility for a university persons with disability parking permit. Persons desiring to purchase a university persons with disability parking permit must present a valid state-issued persons with disability parking identification and permit.

(4) Unless otherwise authorized, long-term parking in spaces designated for persons with disability requires a valid university persons with disability parking permit to park on campus. University semester and annual parking permits for persons with disability are available at the gray zone rate. Daily and temporary parking permits are available at the regular rates.

(5) Persons with a university persons with disability parking permit may park in a persons with disability parking space and any other, nonrestricted permit space within a parking permit zone.

(6) Persons with a university persons with disability parking permit may not park in restricted spaces with the exception of persons with disability parking spaces.

(7) Unless otherwise posted, any university parking permit to include a persons with disability parking permit is not valid in lieu of payment of regular posted fees in pay parking facilities.

(8) A state-issued persons with disability license plate, placard, or permit is valid in lieu of a university persons with disability parking permit in parking zones during times when a university permit is not required.

(9) The university intends to retain control of access to the pedestrian malls on campus. For that reason a university persons with disability parking permit is required in lieu of a state-issued persons with disability license plate, placard, or permit as authorization to use a pedestrian mall to access marked persons with disability parking spaces within the confines of a pedestrian mall.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-650 Parking fees and fines. (1) Schedules for parking fees, parking administrative fees, late payment fees, parking fines and sanctions, parking meter rates, prorate and refund schedules, and the effective date thereof are submitted to the president or his/her designee and to the board of regents for approval by motion, provided however, that increases in fees and fines do not exceed limits established by the board of regents. Increases in fees and fines that do not exceed limits established by the board of regents are

not submitted to the board of regents so long as the board of regents has delegated authority to the president or his designee to approve all such fees and fines. The schedules described above for all parking fees and fines are thereafter posted in the public area of the parking department office and posted on the parking department's web site.

(2) Payments. Parking fees and fines may be paid at the parking department by cash, check, approved payment card, or money order, and on-line through the WSUV parking services payment portal web site. A payroll deduction plan is available for eligible university employees and eligible graduate students.

(3) The annual fee for any shorter period relative to all permits shall be prorated according to the published schedule.

(4) The proper fee must be paid for all vehicles parked in parking meter spaces unless otherwise authorized.

(5) Staff members whose work schedules qualify them for nighttime differential pay may purchase a permit for one-half the regular fee. Verification is required.

(6) Refunds. Annual permits being relinquished may be returned to the parking department for a pro rata refund in accordance with university policy. Identifiable remnants of the permit must be returned. The balance of any fees and fines owed the parking department is deducted from any refund due. Refunds for temporary permits are not granted. Refunds for pretax payroll deductions cannot be granted pursuant to federal tax laws.

(7) The parking department makes a wide array of options available in advance to university departments for use by their visitors, guests, and employees for the purpose of conducting departmental business. However, when necessary, university departments that can establish in writing that a parking ticket issued by the parking department was received as a result of parking any vehicle for the purpose of conducting official state business, or while conducting official business with the university or an entity located at the university are assessed a parking fee assessment (PFA) in lieu of the parking fine. Such requests for PFAs are signed by a department fiscal custodian. A PFA consists of the maximum daily parking fee plus an additional administrative fee for failing to purchase and provide the necessary parking permit or fee in advance or at the time of parking. University departments are encouraged to avoid additional administrative fees associated with PFAs by purchasing and storing pre-paid parking permits and by making them available as the department deems necessary. Nothing in this rule allows a university employee to receive, or attempt to receive, any benefit associated with his or her personal expenses in violation of the State Ethics Act. All questionable employee conduct regarding the application of this section is reported to, and investigated by, the university internal auditor. This section applies only to parking tickets issued pursuant to this chapter.

WSR 12-05-109
PROPOSED RULES
SEATTLE COMMUNITY COLLEGES

[Filed February 22, 2012, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-24-003.

Title of Rule and Other Identifying Information: First amendment time, place, and manner rules.

Hearing Location(s): Seattle Community Colleges, 1500 Harvard Avenue, Seattle, WA 98122, on March 27, at 3:00 p.m. to 4:30 p.m.

Date of Intended Adoption: April 12, 2012.

Submit Written Comments to: Heather Emlund, 1500 Harvard Avenue, Seattle, WA 98122, e-mail heather.emlund@seattlecolleges.edu, by March 20, 2012.

Assistance for Persons with Disabilities: Contact TTY (206) 934-2953.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current time, place, and manner restrictions for first amendment activities on campus do not provide enough protection against disruption of the educational process. These rules would clarify that the agency is a limited forum and further delineate the time, place, and manner for students and nonstudents who wish to engage in protected speech on campus.

Reasons Supporting Proposal: The current time, place, and manner restrictions for first amendment activities do not provide enough protection against disruption of the educational process.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Seattle Community College District VI, governmental.

Name of Agency Personnel Responsible for Drafting: Alan Ward, 1500 Harvard Avenue, Seattle, (206) 934-3811; Implementation and Enforcement: Kurt Buttlerman, 1500 Harvard Avenue, Seattle, (206) 934-4111.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules are not predicted to impose any costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. Seattle Community College District VI is not required to provide a cost-benefit analysis under RCW 34.05.328 (5)(a).

February 21, 2012

Jill A. Wakefield
Chancellor

AMENDATORY SECTION (Amending Order 44, Resolution No. 1984-22, filed 10/10/84)

WAC 132F-136-030 Limitation of use. (1) Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detri-

ment of, the college's own teaching, research, or public service programs.

(2) ~~((In general, the facilities of the))~~ College ~~((shall not))~~ facilities may be rented to ~~((, or used by,))~~ private or commercial organizations or associations ~~((, nor))~~ but shall ~~((the facilities))~~ not be rented to persons or organizations for conducting programs for private gain.

(3) ~~((College facilities may not be used for commercial sales, advertising, or promotional activities except when such activities clearly serve educational objectives (as in display of books of interest to the academic community or in the display or demonstration of technical or research equipment) and when they are conducted under the sponsorship or at the request of a college department, administrative office or student organization.~~

(4) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student sponsored activities.

(5) Activities of commercial or political nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside rooms or facilities to which access has been granted.

(6)) College facilities are available to recognized student groups, subject to these general policies and to the rules and regulations of the college governing student affairs.

~~((7) Handbills, leaflets, and similar materials except those which are commercial, obscene, or unlawful in character may be distributed only in designated areas on the campus where, and at times when, such distribution shall not interfere with the orderly administration of the college affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer and regulated by established guidelines shall not be construed as support or approval of the content by the college community or the board of trustees.~~

(8) Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs as determined by the appropriate administrative officer.

(9)) (4) No person or group may use or enter onto college facilities having in their possession firearms, even if licensed to do so, except commissioned police officers as prescribed by law.

~~((10) The right of peaceful dissent within the college community shall be preserved. The college retains the right to insure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is an illegitimate means of dissent. Should any person, group or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.~~

(11) Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises. However, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits.

~~(12) Peaceful picketing and other orderly demonstrations are permitted in public areas and other places set aside for public meetings in college buildings. Where college space is used for an authorized function, such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities, groups must obey or comply with directions of the designated administrative officer or individual in charge of the meeting.~~

~~(13)) (5) If a college facility abuts a public area or street, and if student activity, although on public property, unreasonably interferes with ingress and egress to college buildings, the college may choose to impose its own sanctions although remedies might be available through local law enforcement agencies.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132F-136-050 Trespass.

Chapter 132F-142 WAC

USE OF FACILITIES FOR FIRST AMENDMENT ACTIVITIES

NEW SECTION

WAC 132F-142-010 Definitions. (1) "College groups" shall mean individuals who are currently enrolled students or current employees of the Seattle community colleges or who are affiliated with a recognized student organization or a recognized employee group of the college.

(2) "College facilities" include all buildings, structures, grounds, office space and parking lots.

(3) "Limited public forum areas" means those areas of each campus that the university has chosen to be open as places for expressive activities protected by the first amendment, subject to reasonable time, place or manner restrictions.

(4) "First amendment activities" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

(5) "Noncollege groups" shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of the Seattle community colleges or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

NEW SECTION

WAC 132F-142-020 Statement of purpose. The Seattle community colleges are educational institutions provided and maintained by the people of the state of Washington.

College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the colleges. The public character of the colleges does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the colleges' facilities and grounds are dedicated. Accordingly, the colleges are designated public forums opened for the limited purposes recited herein and further subject to the time, place, and manner limitations and restrictions set forth in these rules.

The purpose of the time, place and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the colleges' responsibility to fulfill their mission as state educational institutions of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The colleges recognize that college groups should be accorded the opportunity to utilize the facilities and grounds of the colleges to the fullest extent possible. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

NEW SECTION

WAC 132F-142-030 Use of facilities. (1) Subject to the regulations and requirements of this policy, both college and noncollege groups may use the campus limited forums for first amendment activities between the hours of 7:00 a.m. and 10:00 p.m. and the colleges and their campuses are not open to the public except during these times.

(2) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(3) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

(4) College groups are encouraged to notify the campus public safety department no later than twenty-four hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.

(5) College group events shall not last longer than eight hours from beginning to end.

(6) All sites used for first amendment activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.

(7) All fire, safety, sanitation or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

(8) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian or other traffic or oth-

erwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

(9) The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

(10) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(11) College facilities 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 of office or officially chartered student club.

(12) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinances and state or federal laws.

NEW SECTION

WAC 132F-142-040 Additional requirements for noncollege groups. (1) College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities as identified in those policies and rules.

(2) The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for first amendment activities on campus:

(a) Seattle Central Community College and Seattle Vocational Institute: That portion of the Broadway Edison building south plaza within the area delineated by the "Windcradle" aluminum art sculpture to the east, the eighteen-inch brick wall to the south, and the forty-four-inch brick wall to the west.

(b) North Seattle Community College: That portion of center court plaza area bounded on the south by the college center building, on the north by the fountain, on the east by the planting area, on the west by the walkway from the center court stairs. Blocking the center court stairs or walkway to the college center building is not allowed.

(c) South Seattle Community College: The plaza area between Olympic Hall and the clock tower.

(3) Noncollege groups that seek to use the campus limited forums to engage in first amendment activities shall provide notice to the campus public safety department no later than twenty-four hours prior to the event along with the following information:

(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the event (hereinafter "the sponsoring organization"); and

(b) The name, address, and telephone number of a contact person for the sponsoring organization; and

(c) The date, time, and requested location of the event; and

(d) The nature and purpose of the event; and

(e) The type of sound amplification devices to be used in connection with the event, if any; and

(f) The estimated number of people expected to participate in the event.

(4) Noncollege group events shall not last longer than five hours from beginning to end.

NEW SECTION

WAC 132F-142-050 Distribution of materials. Information may be distributed as long as it is not obscene or libelous or does not advocate unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site designated for noncollege groups.

NEW SECTION

WAC 132F-142-070 Posting of a bond and hold harmless statement. When using college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy. When the college grants permission to a college group or noncollege group to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

NEW SECTION

WAC 132F-142-080 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate the district's rules, whose conduct disrupts the orderly functioning of the college, or whose conduct threatens the safety, security, or welfare of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or his or her designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW or Seattle Municipal Code 12A.08.040.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

(3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the manager of campus security within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the manager of campus security or designee will be the final decision of the college and should be issued within five work days.

WSR 12-05-111
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed February 22, 2012, 9:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-104 on December 21, 2011.

Title of Rule and Other Identifying Information: WAC 220-36-023 Salmon—Grays Harbor fall fishery, 220-40-021 Willapa Bay salmon—Summer fishery, and 220-40-027 Salmon—Willapa Bay fall fishery.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on Thursday, March 29, 2012, at 10:00 - 11:30 a.m.

Date of Intended Adoption: On or after April 9, 2012.

Submit Written Comments to: Rules Coordinator, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by March 20, 2012.

Assistance for Persons with Disabilities: Contact Tami Lininger by March 20, 2012, at (360) 902-2267 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Willapa Bay and Grays Harbor while protecting species of fish listed as endangered.

Reasons Supporting Proposal: This rule will protect species of fish listed as endangered while supporting commercial salmon fishing in Willapa Bay and Grays Harbor.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.020, 77.12.-045, and 77.12.047.

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

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

Name of Agency Personnel Responsible for Drafting: Barbara McClellan, 1111 Washington Street, Olympia, (360) 249-1213; Implementation: Jim Scott, 1111 Washington

Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule:

These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Willapa Bay and Grays Harbor.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None - these rule changes clarify dates for anticipated open periods, show areas in Grays Harbor and Willapa Bay that are closed to commercial harvest methods, and explain legal gear requirements.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: None anticipated - these rules are similar to previous years' rules for Willapa Bay and Grays Harbor, and no extra costs of compliance are required.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Cost of Compliance for the Ten Percent of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

There are no anticipated costs of compliance.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The department issues an annual pamphlet and mailer to all license holders to alert them to anticipated open periods, closed areas, and gear requirements.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department cosponsors the annual North of Falcon process, which is a series of public meetings held over a period of several months from February through April each year. These meetings allow constituents to provide input on the rules contained in this filing.

8. A List of Industries That Will Be Required to Comply with the Rule: The industry that is required to comply with these rules is composed of all licensed fishers using legal commercial gear types and seeking to harvest salmon in the all-citizen commercial salmon fisheries occurring in Grays Harbor and Willapa Bay.

A copy of the statement may be obtained by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Lori.preuss@dfw.wa.gov.

~~net~~) gillnet web is deployed into the water until the ~~((gill net))~~ gillnet web is fully retrieved from the water.

(e) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(f) Releases:

(i) All wild (unmarked) coho, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Area 2C.

(ii) All Chinook, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing Areas 2A and 2D.

(g) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

(h) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other:

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) Fishers must take department observers if requested by department staff when participating in these openings. Pursuant to WAC 220-69-240, fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on August ~~((14, 2011))~~ 13, 2012, for August and September openings, and prior to 12:00 p.m. on October 18 for the October openings in Area 2C. Notice of intent must be given prior to 12:00 p.m. on ~~October ((4, 2011))~~ 2, 2012, for the openings in Areas 2A and 2D.

(5) The retention of green sturgeon is prohibited.

(6) It is unlawful to fish for salmon with ~~((gill net))~~ gillnet gear in Areas 2A, 2C, and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices work-

shop and has in their possession a department-issued certification card.

AMENDATORY SECTION (Amending Order 09-108, filed 5/27/10, effective 6/27/10)

WAC 220-40-021 Willapa Bay salmon—Summer fishery. From July 5 through August 15, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes~~(-)~~, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for salmon and white sturgeon only as shown below. All nonlegal sturgeon, all steelhead, and all other species, including Chinook, coho, chum, and white sturgeon, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

<u>Time:</u>	<u>Area:</u>
<u>6:00 a.m. August 6 through</u>	<u>Areas 2M, 2N, 2R, 2T, and</u>
<u>6:00 p.m. August 9, 2012.</u>	<u>2U</u>

Gear:

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

It is unlawful to use a gillnet to fish for salmon and/or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. This does not supersede the rule for drift gillnets as defined in WAC 220-16-040, where it states that a drift gillnet or drift net gear is defined as a gillnet of single web construction not anchored, tied, staked, placed or weighted in such a manner that it cannot drift.

(b) Mesh size must not exceed nine inches.

(c) Only one net may be fished at a time; other nets must be properly stored.

(d) All nonlegal sturgeon and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay when fishing in Willapa Bay Salmon Management Catch Reporting Areas (SMCRA) 2K, 2M, 2N, 2R, 2T, and 2U.

Other:

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) NOAA Fisheries listed the southern population of green sturgeon as threatened under the Endangered Species

lons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(h) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the ((~~gill net~~)) gillnet web is deployed into the water until the ((~~gill net~~)) gillnet web is fully retrieved from the water.

(i) From August 16 through September 30, ((~~2011~~)) 2012, all wild (unmarked) Chinook, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2K, 2M, 2N, 2R, 2T, and 2U.

From October 1 through October 31, ((~~2011~~)) 2012, all wild (unmarked) Chinook, chum, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2K, 2M, 2N, 2R, 2T, and 2U.

From November 6 through November 30, ((~~2011~~)) 2012, all nonlegal sturgeon and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay when fishing in Willapa Bay Areas 2K, 2M, 2N, 2R, 2T, and 2U.

(j) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

(k) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other:

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) The retention of green sturgeon is prohibited.

(5) It is unlawful to fish with ((~~gill net~~)) gillnet gear in Areas 2K, 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

WSR 12-05-112
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed February 22, 2012, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-104 on December 21, 2011.

Title of Rule and Other Identifying Information: WAC 220-47-311, 220-47-401, 220-47-411, 220-47-427, and 220-47-428, rules for commercial salmon fishing in Puget Sound.

Hearing Location(s): Natural Resources Building, Room 175, 1111 Washington Street S.E., Olympia, WA 98504, on Friday, March 30, 2012, at 10:30 to 11:30 a.m.

Date of Intended Adoption: On or after Friday, April 6, 2012.

Submit Written Comments to: Rules Coordinator, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by Monday, March 26, 2012.

Assistance for Persons with Disabilities: Contact Tami Lininger by Monday, March 26, 2012, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable fish in commercial salmon fisheries in Puget Sound while protecting species of fish listed as endangered.

Reasons Supporting Proposal: To protect species of fish listed as endangered while supporting commercial salmon fishing in Puget Sound.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.020, 77.12.-045, and 77.12.047.

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

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

Name of Agency Personnel Responsible for Drafting: Kendall Henry, 1111 Washington Street, Olympia, (360) 902-2717; Implementation: Jim Scott, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such

Requirements: These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rules adjust opening and closing dates, except in Area 12A, where the proposed rules allow the use of larger nets at the request of the affected businesses. However, the proposed rules do not **require** the purchase or use of larger nets. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there is no additional cost to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules do not affect the harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

- 1. Cost per employee;
- 2. Cost per hour of labor; or
- 3. Cost per one hundred dollars of sales

None - The proposed rules do not require any additional equipment, supplies, labor, or administrative costs.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions the Washington department of fish and wildlife (WDFW) has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating these rules.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: As explained above, these rules impose similar requirements used in the previous years' salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Lori Preuss, WDFW Enforcement, 600 Capitol Way North,

Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Lori.preuss@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

February 22, 2012
Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 11-165, filed 7/22/11, effective 8/22/11)

WAC 220-47-311 Purse seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- 10/10, 10/11, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3((-11/4, -11/5))
	7AM - 5PM	- 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10((-11/11, -11/12))

Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

7B, 7C:	6AM - 8PM	- ((8/17, 8/24, 8/31)) <u>8/15, 8/22, 8/29</u>
7B:	7AM - 8PM	- ((9/7)) <u>9/5</u>
	7AM - 7PM	- <u>9/10, 9/12, 9/14</u> ((-9/16))
	7AM	- 6PM ((+0/29)) <u>10/27</u>
	((9/18)) <u>9/16</u>	- 4PM ((+4/4)) <u>11/2</u>
	((+0/31)) <u>10/29</u>	- 4PM ((+4/4)) <u>11/9</u>
	((+1/7)) <u>11/5</u>	- 4PM ((+4/8)) <u>11/15</u>
	((+4/4)) <u>11/12</u>	- 4PM ((+4/25)) <u>11/23</u>
	((+1/21)) <u>11/19</u>	- 4PM ((+4/2)) <u>11/30</u>
	((+1/28)) <u>11/26</u>	

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

((8	6AM-8PM	-	8/22, 8/24, 8/30, 9/4)
8A:	((6AM-	-	8/18, 8/23, 8/25, 8/29)
	8PM		

AREA	TIME	DATE
	7AM - 7PM	- Limited participation - two boats ((9/19, 9/26)) 9/17, 9/24
8D:	7AM - 7PM	- ((9/19, 9/26, 10/3)) 9/17, 9/24, 10/1
	7AM - 6PM	- ((10/10, 10/18, 10/24, 10/26, 11/4)) 10/8, 10/16, 10/22, 10/24, 10/29
	7AM - 5PM	- 11/5, 11/7, ((11/9, 11/15)) 11/13
	7AM - 4PM	- ((11/29)) 11/20
10	((6AM--8PM	- Limited participation - four boats (8/22, 8/24, 8/30))
10, 11:	7AM - 6PM	- ((10/18, 10/24, 10/26, 11/4)) 10/15, 10/23, 10/25, 10/29
	7AM - 5PM	- ((11/7, 11/9, 11/15)) 11/6, 11/8, 11/12
	7AM - 4PM	- ((11/22)) 11/20
12, 12B:	7AM - 6PM	- ((10/18, 10/24, 10/26, 11/4)) 10/15, 10/23, 10/25, 10/29
	7AM - 5PM	- ((11/7, 11/9, 11/15)) 11/6, 11/8, 11/12
12C:	7AM - 5PM	- ((11/7, 11/9, 11/15)) 11/6, 11/8, 11/12
	7AM - 4PM	- ((11/21)) 11/20

Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). During limited participation fisheries it is unlawful for vessels to take or fish for salmon without department observers on board.

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October ((22)) 20 in Area 7B.

Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September ((4)) 2 in Area 7B.

Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.

AREA	TIME	DATE
6D: Skiff ((gill-net)) gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	- 7PM

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff ((gill-net)) gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM	-	Midnight; use of recovery box required
	7AM	-	Midnight

All other saltwater and freshwater areas - Closed.

AMENDATORY SECTION (Amending Order 11-165, filed 7/22/11, effective 8/22/11)

WAC 220-47-401 Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7, 7A	5AM - 9PM Daily	((10/2--11/13)) 9/30 - 11/10

(2) It is unlawful at all times to retain wild Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or wild coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in the logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia, WA(()) 98501-1091.

(4) All other saltwater and freshwater areas - Closed.

AMENDATORY SECTION (Amending Order 11-165, filed 7/22/11, effective 8/22/11)

WAC 220-47-411 ((Gill-net)) Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with ((gill-net)) gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

DATE(S)	MINIMUM MESH
9/21, 9/22, ((9/23)) 9/24, 9/25, 9/26, 9/27, 9/28, ((9/29, 9/30)) 10/1, 10/2, 10/3, 10/4, 10/5, ((10/6, 10/7)) 10/8, 10/9, 10/10, 10/11, 10/12, ((10/13)) 10/15, 10/16, 10/17, 10/18, 10/19((, 10/20, 10/21))	5"
10/10, 10/11((, 10/14, 10/15))	6 1/4"
10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10((, 11/11, 11/12))	6 1/4"

AREA	TIME		DATE(S)	MINIMUM MESH
Note: In Areas 7 and 7A after October 9 but prior to October 16, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the ((gill-net)) <u>gillnet</u> web enters the water, until the ((gill-net)) <u>gillnet</u> is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).				
7B, 7C:	7PM	-	8AM NIGHTLY 8/12, 8/14, ((8/16, 8/17)) 8/15, 8/19, 8/20, 8/21, 8/22, ((8/23, 8/24)) 8/26, 8/28, 8/29, 8/30((-8/31))	7"
7B:	7AM	-	7 AM the day following 9/2, 9/3, 9/4, 9/5, 9/6, ((9/7, 9/8)) 9/9, 9/10, 9/11, 9/12, 9/13((-9/14, 9/15))	5"
	7AM ((9/18)) 9/16	-	Midnight ((10/22)) 10/20	5"
	12:01AM ((10/23)) 10/21	-	Midnight ((10/29)) 10/27	6 1/4"
	7AM ((10/31)) 10/29	-	4PM ((11/4)) 11/2	6 1/4"
	6AM ((11/7)) 11/5	-	4PM ((11/11)) 11/9	6 1/4"
	6AM ((11/14)) 11/12	-	4PM ((11/18)) 11/16	6 1/4"
	7AM ((11/21)) 11/19	-	4PM ((11/25)) 11/23	6 1/4"
	8AM ((11/28)) 11/26	-	4PM ((12/2)) 11/30	6 1/4"
Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to ((gill-nets)) <u>gillnets</u> using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.				
((8:	5AM	-	11PM 8/23, 8/25	5" minimum and 5 1/2" maximum
	5:30AM	-	11PM 8/29, 8/31	5" minimum and 5 1/2" maximum))
Note: In Area 8 it is unlawful to take or fish for pink salmon with drift ((gill-nets)) <u>gillnets</u> greater than 60-mesh maximum depth.				
8A:	((5AM	-	11:30PM 8/17	5" minimum and 5 1/2" maximum
	5AM	-	11PM 8/22, 8/24	5" minimum and 5 1/2" maximum
	5:30AM	-	11PM 8/31	5" minimum and 5 1/2" maximum))
	6PM	-	8AM NIGHTLY ((9/27, 9/28)) 9/25, 9/26	5"
8D:	6PM	-	8AM NIGHTLY ((9/18, 9/19)) 9/16, 9/20, ((9/21, 9/22, 9/25, 9/26)) 9/23, 9/27, ((9/28, 9/29, 10/2, 10/3)) 9/30, 10/4((-10/5, 10/6))	5"
	6PM 9/17	=	8AM 9/20	5"
	6PM 9/24	=	8AM 9/27	5"
	6PM 10/1	=	8AM 10/4	5"
	5PM	-	8AM ((10/9, 10/10)) 10/7, 10/11((-10/12, 10/13))	5"
	5PM 10/8	=	8AM 10/11	5"
	5PM	-	9AM ((10/16, 10/17)) 10/14, 10/18, ((10/19, 10/20, 10/23, 10/24)) 10/21, 10/25, ((10/26, 10/27, 10/30, 10/31)) 10/28, 11/1((-11/2, 11/3))	5"
	((7AM	-	9PM 9/20, 9/21, 9/27, 9/28, 10/4, 10/5	5"))
	5PM 10/15	=	9AM 10/18	5"
	5PM 10/22	=	9AM 10/25	5"
	5PM 10/29	=	9AM 11/1	5"
	((7AM	-	8PM 10/11, 10/12, 10/18, 10/19, 10/25, 10/26, 11/1, 11/2	5"))
	6AM	-	6PM ((11/9, 11/10, 11/16, 11/17)) 11/7, 11/8, 11/14, 11/15	6 1/4"

AREA	TIME		DATE(S)	MINIMUM MESH
	7AM	-	6PM ((11/23, 11/24)) <u>11/21, 11/22</u>	6 1/4"
	6AM	-	4PM ((11/11, 11/18)) <u>11/9, 11/16</u>	6 1/4"
	7AM	-	4PM ((11/25)) <u>11/23</u>	6 1/4"
9A: Skiff ((gill-net)) <u>gillnet</u> only, defini- tion WAC 220-16- 046 and lawful gear description WAC 220-47-302.	7AM	-	7PM ((10/29)) <u>10/27</u> ((8/21)) <u>8/19</u>	5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

(10	5AM	-	11PM Limited participation – four boats (8/23, 8/25)	4 1/2" minimum and 5 1/2" maximum
	5:30AM	-	11PM Limited participation – four boats (8/30)	4 1/2" minimum and 5 1/2" maximum))

Note: In Area 10 during August or September openings coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the (~~(gill-net)~~) gillnet web enters the water, until the (~~(gill-net)~~) gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). During all limited participation fisheries it is unlawful for vessels to take or fish for salmon without department observers on board.

10, 11:	5PM	-	9AM NIGHTLY 10/16, ((10/27)) <u>10/21, 10/30</u>	6 1/4"
	5PM	-	8AM NIGHTLY ((10/25)) <u>10/24</u>	6 1/4"
	4PM	-	8AM NIGHTLY ((11/8, 11/10)) <u>11/4, 11/7, 11/13</u>	6 1/4"
	3PM	-	8AM NIGHTLY ((11/20)) <u>11/18</u>	6 1/4"
	4PM	-	Midnight NIGHTLY ((10/19, 11/2, 11/16, 11/23)) <u>10/17, 10/31, 11/14, 11/21</u>	6 1/4"
12A: Skiff ((gill-net)) <u>gillnet</u> only, definition WAC 220- 16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of ((gill-net)) <u>gillnet</u> gear.	5"

Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff (~~(gill-net)~~) gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

12, 12B:	7AM	-	8PM ((10/17, 10/19, 10/25, 10/27, 10/31, 11/2)) <u>10/16, 10/18, 10/22, 10/24, 10/30, 11/1</u>	6 1/4"
	6AM	-	6PM ((11/8, 11/10, 11/14, 11/16)) <u>11/5, 11/7, 11/13, 11/15</u>	6 1/4"
12C:	6AM	-	6PM ((11/8, 11/10, 11/14, 11/16)) <u>11/5, 11/7, 11/13, 11/15</u>	6 1/4"
	7AM	-	6PM ((11/22, 11/24)) <u>11/18, 11/19, 11/21</u>	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending Order 11-165, filed 7/22/11, effective 8/22/11)

WAC 220-47-427 Puget Sound—Beach seine—Emerging commercial fishery—Eligibility—Lawful gear.

(1) The Puget Sound beach seine salmon fishery is designated as an emerging commercial fishery for which a vessel is required. An emerging commercial fishery license and an experimental fishery permit are required to participate in this fishery.

(2) The department will issue four salmon beach seine experimental fishery permits.

(3) The following is the selection process the department will use to offer a salmon beach seine experimental permit.

(a) Persons who held a salmon beach seine experimental fishery permit in the previous management year will be eligible for a permit in the current management year.

(b) The department will work with the advisory board, per RCW 77.70.160(1), to establish criteria by which applicants (~~(would)~~) will qualify to enter the pool. The pool established by this drawing will be maintained to replace any permit(s) which (~~(may be))~~ are voided.

(4) Permit holders are required to participate in the salmon beach seine experimental fishery.

(a) For purposes of this section, "participation" means the holder of the salmon beach seine experimental permit (~~(being))~~ is aboard the designated vessel in the open fishery.

(b) If the salmon beach seine experimental permit holder fails to participate, the salmon beach seine experimental per-

mit issued to that fisher will be ~~((void))~~ voided, and a new salmon beach seine experimental permit will be issued through a random drawing from the applicant pool.

(c) The department may require permit holders to show proof of participation by maintaining a department approved log book or registering with state officials each day the salmon beach seine experimental permit holder participates.

(d) Persons who participate~~((s))~~ in the fishery but violate conditions of a salmon beach seine experimental permit~~((s))~~ will have ~~((the))~~ their permit voided, and a new salmon beach seine experimental permit will be reissued through a random drawing from the pool of the voided permit holder.

(5) In Quilcene Bay, chum salmon may not be retained by a salmon beach seine experimental permit holder. Chum salmon in Quilcene Bay must be released alive.

(6) Any person who fails to purchase the license, fails to participate, or violates the conditions of a salmon beach seine experimental permit will have his or her name permanently withdrawn from the pools.

(7) It is unlawful to take salmon with beach seine gear that does not meet the requirements of this subsection.

(a) Beach seine salmon nets in Puget Sound shall not exceed ~~((600))~~ 990 feet in length or ~~((100))~~ 200 meshes in depth, or contain meshes of a size less than 3 inches or greater than 4 inches.

(b) Mesh webbing must be constructed with a twine size no smaller than 210/30d nylon, 12 thread cotton, or the equivalent diameter in any other material.

AMENDATORY SECTION (Amending Order 11-165, filed 7/22/11, effective 8/22/11)

WAC 220-47-428 Beach seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
12A:	7AM - 7PM	8/20, 8/21, 8/22, 8/23, 8/24, ((8/25, 8/26)) 8/27, 8/28, 8/29, 8/30, 8/31, ((9/1, 9/2)) 9/3, 9/4, 9/5, 9/6, 9/7, ((9/8, 9/9)) 9/10, 9/11, 9/12, 9/13, 9/14, ((9/15, 9/16)) 9/17, 9/18, 9/19, 9/20, 9/21, ((9/22, 9/23)) 9/24, 9/25, 9/26, 9/27, 9/28 ((9/29, 9/30))
12H:	7AM - 7PM	November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

It is unlawful to retain Chinook taken with beach seine gear in all areas, and it is unlawful to retain chum from Area 12A.

WSR 12-05-116
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed February 22, 2012, 10:05 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-330-010 License, survey, change of ownership, refund process and 246-330-199 Fees, amending rules to update the definition of ambulatory surgical facilities and increase fees.

Hearing Location(s): Department of Health, 310 Israel Road, Point Plaza East, Room 152/153, Tumwater, WA 98501, on March 27, 2012, at 2:30 p.m.

Date of Intended Adoption: April 6, 2012.

Submit Written Comments to: Debra Fisher, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by March 27, 2012.

Assistance for Persons with Disabilities: Contact Debra Fisher by March 20, 2012, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule increases licensing fees for ambulatory surgical facilities (ASF) to more adequately fund the operation of the ASF program. The rule changes the existing fee structure to a new nine-tier structure with fees ranging from \$3,630 to \$10,068. The rule also updates the ASF definition in WAC 246-330-010 to reflect the ASF definition in RCW 70.230.010.

Reasons Supporting Proposal: In 2007, ASF was established as a new licensing category (effective 2009) to protect the public's health by ensuring a safe environment for ASF patients. RCW 43.70.250 requires the cost of each licensing program be fully borne by the licensees. Since 2009, costs to operate the ASF program have far exceeded revenue. In 2011, the department was given the authority in the operating budget (E2SHB 1087) to increase fees to fund the costs of the program. In addition, HB 1575 (2011) was passed redefining ASFs that fall under the licensing requirement. The proposed rule also reflects that change.

Statutory Authority for Adoption: Chapter 43.70 RCW and 2ESHB 1087 (2011).

Statute Being Implemented: Chapter 43.70 RCW and 2ESHB 1087 (2011).

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: Debra Fisher, 310 Israel Road, Tumwater, WA 98501, (360) 236-2942; Implementation: Bart Eggen, 310 Israel Road, Tumwater, WA 98501, (360) 236-2960; and Enforcement: Byron Plan, 310 Israel Road, Tumwater, WA 98501, (360) 236-2916.

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.

February 22, 2012
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 09-09-032, filed 4/7/09, effective 5/8/09)

WAC 246-330-010 Definitions. ~~((For the purposes of this chapter, the following words and phrases will have the following meanings))~~ The definitions in this section apply throughout this chapter unless the context clearly ((indicates)) requires otherwise:

(1) "Abuse" means injury or sexual abuse of a patient indicating the health, welfare, and safety of the patient is harmed:

(a) "Physical abuse" means acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means to impose willful or reckless mental or emotional anguish by threat, verbal behavior, harassment, or other verbal or nonverbal actions which may result in emotional or behavioral stress or injury.

(2) "Advanced registered nurse practitioner" means an individual licensed under chapter 18.79 RCW.

(3) "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the National Quality Forum in 2002 (and as updated), in its consensus report on serious reportable events in health care as referenced in chapter 70.56 RCW.

(4) "Agent," when referring to a medical order or procedure, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

(5) "Alteration" means any change, addition, functional change, or modification to an existing ambulatory surgical facility or a portion of an existing ambulatory surgical facility.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or electrical systems, does not affect fire and life safety, and does not add facilities in addition to that for which the ambulatory surgical facility is currently licensed. Minor alterations do not require prior review and approval by the department.

(6) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal Social Security Act. ~~((Excluded from this definition are a dental office, an ambulatory surgical facility licensed as part of a hospital under chapter 70.41 RCW or a practitioner's office where surgical procedures are conducted without general anesthesia.))~~ An ambulatory surgical facility includes one or more surgical suites that are adjacent to and within the same building as, but not in, the

office of a practitioner in an individual or group practice, if the primary purpose of the one or more surgical suites is to provide specialty or multispecialty outpatient surgical services, irrespective of the type of anesthesia administered in the one or more surgical suites. An ambulatory surgical facility that is adjacent to and within the same building as the office of a practitioner in an individual or group practice may include a surgical suite that shares a reception area, restroom, waiting room, or wall with the office of the practitioner in an individual or group practice.

(7) "Assessment" means the:

(a) Systematic collection and review of patient-specific data;

(b) A process for obtaining appropriate and necessary information about individuals seeking entry into the ambulatory surgical facility or service; and

(c) Information used to match an individual with an appropriate setting or intervention. The assessment is based on the patient's diagnosis, care setting, desire for care, response to any previous treatment, consent to treatment, and education needs.

(8) "Authentication" means the process used to verify an entry is complete, accurate, and final.

(9) "Change of ownership" means:

(a) A sole proprietor who transfers all or part of the ambulatory surgical facility's ownership to another person or persons;

(b) The addition, removal, or substitution of a person as a general, managing, or controlling partner in an ambulatory surgical facility owned by a partnership where the tax identification number of that ownership changes; or

(c) A corporation that transfers all or part of the corporate stock which represents the ambulatory surgical facility's ownership to another person where the tax identification number of that ownership changes.

(10) "Clinical evidence" means evidence used in diagnosing a patient's condition or assessing a clinical course and includes, but is not limited to:

(a) X-ray films;

(b) Digital records;

(c) Laboratory slides;

(d) Tissue specimens; or

(e) Medical photographs.

(11) "Department" means the Washington state department of health.

(12) "Double-checking" means verifying patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons.

(13) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

(14) "Emergency medical condition" means a condition manifesting itself by acute symptoms of severity (including severe pain, symptoms of mental disorder, or symptoms of substance abuse) that absent of immediate medical attention could result in:

(a) Placing the health of an individual in serious jeopardy;

(b) Serious impairment to bodily functions;

(c) Serious dysfunction of a bodily organ or part; or

(d) With respect to a pregnant woman who is having contractions:

(i) That there is inadequate time to provide a safe transfer to a hospital before delivery; or

(ii) That the transfer may pose a threat to the health or safety of the woman or the unborn child.

(15) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(16) "Family" means individuals designated by a patient who need not be relatives.

(17) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway. Lower levels of sedation that unintentionally progress to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(18) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the ambulatory surgical facility.

(19) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services as defined in chapter 70.41 RCW.

(20) "Individualized treatment plan" means a written and/or electronically recorded statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

(a) Treatment goals, with stipulated time frames;

(b) Specific services to be utilized;

(c) Designation of individuals responsible for specific service to be provided;

(d) Discharge criteria with estimated time frames; and

(e) Participation of the patient and the patient's designee as appropriate.

(21) "Invasive medical procedure" means a procedure involving puncture or incision of the skin or insertion of an

instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

(22) "Maintenance" means the work of keeping something in safe, workable or suitable condition.

(23) "Medical equipment" means equipment used in a patient care environment to support patient treatment and diagnosis.

(24) "Medical staff" means practitioners and advanced registered nurse practitioners appointed by the governing authority.

(25) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

(26) "Near miss" means an event which had the potential to cause serious injury, death, or harm but did not happen due to chance, corrective action or timely intervention.

(27) "Neglect" means mistreatment or maltreatment, a disregard of consequences constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts that may result in emotional or behavioral problems, physical manifestations, and disorders.

(28) "New construction" means any renovation, alteration or new facility to be licensed as an ambulatory surgical facility.

(29) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

(30) "Operating room" means a room intended for invasive procedures.

(31) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services.

(32) "Patient care areas" means all areas of the ambulatory surgical facility where direct patient care is delivered and where patient diagnostic or treatment procedures are performed.

(33) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

(34) "Pharmacist" means an individual licensed by the state board of pharmacy under chapter 18.64 RCW.

(35) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted.

(36) "Physician" means an individual licensed under chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

(37) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(38) "Prescription" means an order for drugs or devices issued by a practitioner authorized by law or rule in the state of Washington for a legitimate medical purpose.

(39) "Protocols" and "standing order" mean written or electronically recorded descriptions of actions and interventions for implementation by designated ambulatory surgical facility staff under defined circumstances recorded in policy and procedure.

(40) "Recovery unit" means a physical area for the segregation, concentration, and close or continuous nursing observation of patients for less than twenty-four hours immediately following anesthesia, surgery, or other diagnostic or treatment procedures.

(41) "Registered nurse" means an individual licensed under chapter 18.79 RCW.

(42) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, a physical or mechanical device, or a drug given not required to treat a patient's symptoms.

(43) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

(44) "Sedation" means the administration of drugs to obtund, dull, reduce the intensity of pain or awareness, allay patient anxiety and control pain during a diagnostic or therapeutic procedure where the administration of those drugs by any route carries the risk of loss of protective reflexes to include any of the following:

(a) "Minimal sedation or anxiolysis" is a state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected;

(b) "Moderate or conscious sedation" is a depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained; and

(c) "Deep sedation" is a depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(45) "Sexual assault" means, according to RCW 70.125.-030, one or more of the following:

- (a) Rape or rape of a child;
- (b) Assault with intent to commit rape or rape of a child;
- (c) Incest or indecent liberties;
- (d) Child molestation;
- (e) Sexual misconduct with a minor;
- (f) Custodial sexual misconduct;
- (g) Crimes with a sexual motivation; or
- (h) An attempt to commit any of the offenses in (a) through (h) of this subsection.

(46) "Severe pain" means a level of pain reported by a patient of 8 or higher based on a 10-point scale with 1 being the least and 10 being the most pain.

(47) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

(48) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cytogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of disease, process or injury through that branch of medicine that treats diseases, injuries and deformities by manual or operative methods by a practitioner.

(49) "Surrogate decision-maker" means an individual appointed to act on behalf of another when an individual is without capacity or has given permission.

(50) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a hospital providing emergency services and for continuity of care for that patient.

(51) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

(a) Pharmacologic, surgical, or supportive;

(b) Specific for a disorder; or

(c) Symptomatic to relieve symptoms without effecting a cure.

(52) "Vulnerable adult" means:

(a) As defined in chapter 74.34 RCW, a person sixty years of age or older who lacks the functional, physical, or mental ability to care for him or herself;

(b) An adult with a developmental disability per RCW 71A.10.020;

(c) An adult with a legal guardian per chapter 11.88 RCW;

(d) An adult living in a long-term care facility (an adult family home, boarding home or nursing home);

(e) An adult living in their own or a family's home receiving services from an agency or contracted individual provider; or

(f) An adult self-directing their care per RCW 74.39.050;

(g) For the purposes of requesting background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(53) "Well-being" means free from actual or potential harm, abuse, neglect, unintended injury, death, serious disability or illness.

AMENDATORY SECTION (Amending WSR 09-09-032, filed 4/7/09, effective 5/8/09)

WAC 246-330-199 Fees—License, ~~((survey,))~~ change of ownership, refund process. This section establishes the initial and renewal license fees, ~~((survey, and))~~ change of ownership fee~~((s))~~, ~~((a))~~ late ~~((penalty))~~ fee, and request for refund of an initial license fee for an ambulatory surgical facility (ASF). ~~((The license and survey fee are good for the entire three-year license period. The change of ownership fee is good for that transaction and does not change the original license ending date.))~~

(1) Initial and renewal license fees. An initial license or a renewal license and fee are valid for three years. An appli-

cant((s)) for an initial or renewal license must ((send)) submit one of the following fees to the department:

Ambulatory Surgical Facility Initial and Renewal Fees

Fee Type	Fees		
	Performs 1,000 or Fewer Surgical Procedures on an Annual Basis	Performs 1,001 - 5,000 Surgical Procedures on an Annual Basis	Performs More than 5,000 Surgical Procedures on an Annual Basis
Initial and Renewal License			
Accredited	\$3,630	\$4,447	\$5,410
Medicare Certified	\$4,781	\$5,925	\$7,273
State Licensed Only	\$6,507	\$8,142	\$10,068

(a) ~~((An initial license fee of two hundred dollars; and (b) An initial survey fee based on the number of known or expected annual visits as follows:~~

- ~~(i) One thousand two hundred dollars for under one thousand annual patient visits;~~
- ~~(ii) One thousand six hundred dollars for one thousand one to five thousand annual patient visits; or~~
- ~~(iii) Two thousand two hundred dollars for more than five thousand annual patient visits.~~

~~(2) Renewal license. Licensees must send the department a license renewal and survey fee at least thirty days before the license expiration date as follows:~~

- ~~(a) One thousand three hundred dollars for under one thousand annual patient visits;~~
- ~~(b) One thousand seven hundred dollars for one thousand one to five thousand annual patient visits; or~~
- ~~(c) Two thousand three hundred dollars for more than five thousand annual patient visits.~~

~~(3)) Accredited, for purposes of the initial and renewal fee, means an ASF is accredited by one of the organizations identified in WAC 246-330-025 (1)(b) at the level that meets medicare's conditions of coverage.~~

~~(b) Medicare certified means an ASF is certified by the Centers for Medicare and Medicaid Services (CMS).~~

~~(c) State licensed only means an ASF that is not accredited at the level that meets medicare's conditions of coverage and is not medicare certified.~~

~~(2) Late fee. A licensee must send the department a late fee in the amount of ((twenty-five)) fifty dollars per day, not to exceed ((five hundred)) one thousand dollars, whenever the renewal fee is not paid by thirty days before the license expiration (date as indicated by the postmark).~~

~~((4)) (3) Change of ownership. The change of ownership fee is good for that transaction and does not change the original license ending date. The person purchasing or taking over ownership of a licensed ((ambulatory surgical facility)) ASF must:~~

~~(a) Send the department a change of ownership fee in the amount of ((two)) five hundred ((fifty)) dollars((-The fee is paid)) thirty days before the change of ownership becomes final; and~~

~~(b) Receive from the department a new license valid for the remainder of the current license period.~~

~~((5)) (4) An applicant may request a refund for initial licensure as follows:~~

(a) Two-thirds of the initial fee paid after the department has received an application and not conducted an on-site survey or provided technical assistance; or

(b) One-third of the initial fee paid after the department has received an application and conducted either an on-site survey or provided technical assistance but not issued a license.

WSR 12-05-118

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed February 22, 2012, 10:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-02-061.

Title of Rule and Other Identifying Information: Chapter 16-662 WAC, Weights and measures—National handbooks. The department is proposing to adopt:

(1) The 2012 edition of the National Institute of Standards and Technology (NIST) Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality);

(2) Modifications to NIST Handbook 130 that address current industry needs and standards; and

(3) Amendments that increase rule clarity and readability.

Hearing Location(s): Washington State Department of Agriculture (WSDA), 1111 Washington Street S.E., Natural Resources Building, Conference Room 271, Olympia, WA 98504-2560, on March 27, 2012, at 2:00 p.m.

Date of Intended Adoption: March 30, 2012.

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 March 27, 2012.

Assistance for Persons with Disabilities: Contact Henri Gonzales by March 20, 2012, 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 2012 edition of the NIST Handbook 130, with modifications. NIST Handbook 130 establishes the standards for: Packaging and labeling; method of sale of commodities; examination procedures for price verification; and engine fuels, petroleum products, and automotive lubricants. The 2012 edition of NIST Handbook 130 with modifications is being proposed for adoption under the authority of RCW 19.94.190, 19.112.020, and 19.112.140.

Reasons Supporting Proposal: The purpose of this chapter is to establish 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. The department is proposing to adopt the most recent version of NIST Handbook 130 with modifications. The NIST handbooks are national consensus codes that establish industry standards for weighing and measuring devices, metrology, engine fuel quality, and net contents of packaged goods. The department adopts these handbooks in order to maintain uniformity with other states where appropriate.

Statutory Authority for Adoption: RCW 19.94.190, 19.112.020 and 19.112.140, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 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 a regulated industry. WSDA has determined that WSDA-regulated small businesses may be impacted, but costs are not considered more than minor. Because the proposed rule changes would constitute relief from an existing requirement, the amendments may economically benefit some businesses affected by the rule. WSDA has determined that an 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).

February 22, 2012
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 12-02-021, filed 12/28/11, effective 1/28/12)

WAC 16-662-105 Standards 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	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	2011 Edition 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)) 2012 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 Hand

National standard for:	Contained in the:
	book 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, ((2009)) 2012 Edition.</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))
(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, ((2009)) 2012 Edition.</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))
(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, ((2009)) 2012 Edition.</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))

National standard for:	Contained in the:
(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)) <u>2012</u> Edition. ((Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of <i>NIST Handbook 130 to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation</i>))

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:
(1) <u>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.)"
(2) <u>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:
(3) Section 2.23. Animal Bedding	Add a new subsection which reads: ((2.23.1.)) <u>2.23.2. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products.</u> 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) <u>Section 2.1.3. Gasoline-Ethanol Blends</u>	<u>Modify section 2.1.3. to read: "When gasoline is blended with 1 to 10 volume percent ethanol, the ethanol shall meet the requirements of ASTM D4806 and either:</u> <u>(a) The base gasoline used for blending with ethanol shall meet the requirements of ASTM D4814; except that the base gasoline shall meet the minimum temperature for a Vapor-Liquid Ratio of 20 for the applicable vapor lock protection class as follows:</u> <u>(1) Class 1 shall be 60°C (140°F)</u> <u>(2) Class 2 shall be 56°C (133°F)</u> <u>(3) Class 3 shall be 51°C (124°F)</u> <u>(4) Class 4 shall be 47°C (116°F)</u> <u>(5) Class 5 shall be 41°C (105°F)</u> <u>or</u> <u>(b) The blend shall meet the requirements of ASTM D4814."</u> <u>Add a new subsection to read: "2.1.3.1. Maximum Vapor Pressure. The maximum vapor pressure of a gasoline-ethanol blend shall not exceed ASTM D4814 limits by more than 1.0 psi for:</u> <u>(a) Only 9 to 10 volume percent ethanol blends from June 1 through September 15.</u> <u>(b) All blends of 1 to 10 volume percent ethanol from September 16 through May 31."</u>
(2) Section 2.12. Motor Oil	Delete section 2.12.
((2)) (3) Section 2.13. Products for Use in Lubricating Manual Transmissions, Gears, or Axles	Delete section 2.13.
((3)) (4) Section 2.14. Products for Use in Lubricating Automatic Transmissions	Delete section 2.14.
((4)) (5) 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

Modified Section:	Modification:
	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)."
((5)) (6) 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)) (7) 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)) (8) 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)) (9) Section 3.13. Oil	Delete section 3.13.
((9)) (10) Section 3.14. Automatic Transmission Fluid	Delete section 3.14.
((10)) (11) 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)) (12) 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 16-662-125 ~~((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.))~~