

WSR 12-12-007
PROPOSED RULES
GAMBLING COMMISSION

[Filed May 24, 2012, 8:33 a.m.]

Continuance of WSR 11-23-172.

Preproposal statement of inquiry was filed as WSR 11-15-019.

Title of Rule and Other Identifying Information: New sections WAC 230-11-200 Defining "electronic raffle system," 230-11-205 Operating requirements for electronic raffle systems, 230-11-210 Leasing electronic raffle systems, and 230-16-152 Remote access of electronic raffle systems.

Hearing Location(s): Embassy Suites Hotel, 15920 West Valley Highway, Seattle, WA 98188, (206) 227-8844, on July 12 or 13, 2012, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 12 or 13, 2012. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2012.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by July 1, 2012, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 50/50 Central, formerly a licensed manufacturer, is requesting a rule change to allow raffle tickets to be sold using electronic raffle systems. The system is loaded into hand-held equipment that prints raffle tickets. For example, an individual representing a charitable/nonprofit organization could walk around an arena with a hand-held point of sale system (POS) and ask people if they want to purchase a raffle ticket. If so, the individual representing the nonprofit would collect money, print a receipt from the POS equipment and give the receipt to the purchaser. The raffle number(s) are printed on the receipt. Individuals who purchase tickets would not interact with the equipment. Currently, one discount plan is allowed per raffle (for example, tickets are \$8 each, or buy 2 for \$10). The rule change would allow raffles that use the electronic accounting system to use up to four discount plans for a raffle.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0277.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Blair Smith, representing 50/50 Central Ltd, a previously licensed manufacturer, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs on any licensee. Although there is a cost associated with purchasing the electronic raffle system, licensees would not be required to use the system.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 24, 2012

Susan Arland

Rules Coordinator

ELECTRONIC RAFFLE SYSTEMS

NEW SECTION

WAC 230-11-200 Defining "electronic raffle system." "Electronic raffle system" means computer software and related gambling equipment approved by us and used by raffle licensees to sell tickets, account for sales, and print paper tickets to determine winners.

NEW SECTION

WAC 230-11-205 Operating requirements for electronic raffle systems. Electronic raffle systems must be approved by us prior to use, meet the requirements below, and not perform additional functions:

- (1) Raffle licensees using electronic raffle systems must:
 - (a) Conduct their raffles in the same way as other raffles; and
 - (b) Print individual raffle tickets prior to the drawing; and
 - (c) Disconnect all connections that go outside of the electronic raffle system to ensure that internet capability is not available; and
 - (d) Not allow raffle players to interact with the electronic raffle system.
- (2) Approved electronic raffle systems may bundle tickets and sell them at a discount if they:
 - (a) Create the discount plan before selling any raffle tickets; and
 - (b) Do not change the discount plan during the raffle; and
 - (c) Make single nondiscounted tickets available to all participants; and
 - (d) Only use up to a maximum of four discount plans for each raffle; and
 - (e) Print each discounted raffle ticket number included in a bundle and a description of the discount plan on a single ticket/receipt.

NEW SECTION

WAC 230-11-210 Leasing electronic raffle systems. If a raffle licensee leases an electronic raffle system from a manufacturer, the lease must not be based on, in whole or in

part, the raffle receipts. However, manufacturers may charge a fixed amount per event.

ELECTRONIC RAFFLE SYSTEMS

NEW SECTION

WAC 230-16-152 Remote access of electronic raffle systems. Licensed manufacturers or manufacturer representatives may access the electronic raffle systems for maintenance or repair. Remote access will only be enabled for the duration of the maintenance or repair and the connection terminated immediately after.

WSR 12-12-011 PROPOSED RULES LIQUOR CONTROL BOARD

[Filed May 24, 2012, 12:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-066.

Title of Rule and Other Identifying Information: Creating a new rule to allow minors in restaurants with cinemas under certain conditions.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Lacey, WA 98504, on July 11, 2012, at 10:00 a.m.

Date of Intended Adoption: July 18, 2012.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9869, by July 11, 2012.

Assistance for Persons with Disabilities: Contact Karen McCall by July 11, 2012, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At the request of stakeholders, created a new rule to allow minors in restaurants with cinemas under certain conditions. The new rule is WAC 314-03-050.

Reasons Supporting Proposal: This was a request from stakeholders with small family restaurants that show movies as part of the dining experience. The restaurant is designed and run to appeal to families, not adults only.

Statutory Authority for Adoption: RCW 66.08.030.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Chief of Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal has a positive impact on businesses or individuals that have family restaurants that want to show cinemas during meals.

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

May 24, 2012

Sharon Foster

Chairman

NEW SECTION

WAC 314-03-050 Limited patron participation entertainment at a spirits, beer, and wine restaurant or a beer and/or wine restaurant. (1) A spirits, beer, and wine restaurant or a beer and/or wine restaurant may provide entertainment with limited physical participation by patrons in the dedicated dining area of their licensed premises. Examples of this form of permitted entertainment include text messaging to movie screens, watching movies, nonpatron skits, and comedy acts. Such limited patron participation is permitted under the following conditions:

The dedicated dining area meets the following criteria:

(a) Wait staff provides table service to patrons which includes interaction; and

(b) Lighting requirements outlined in WAC 314-11-085.

(2) Licensees must submit a request to the board's licensing and regulation division to provide limited patron participation entertainment in the dedicated dining area of their premises.

(a) The licensee may begin the activity as soon as the approval is received.

(b) Board approval will be based on the request meeting the requirements outlined in this section.

(3) Minors are allowed after 11:00 p.m. in the dining area of a premises that has received approval as referenced in this section.

WSR 12-12-043 PROPOSED RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed May 31, 2012, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-021.

Title of Rule and Other Identifying Information: Amends chapter 181-78A WAC. Defines professional growth team and clarifies the requirement for a professional growth plan to be oriented to the professional certificate. Technical corrections related to educational service associate certificates.

Hearing Location(s): Phoenix Inn, 415 Capitol Way North, Olympia, WA 98501, on July 30, 2012, at 8:30 a.m.

Date of Intended Adoption: July 30, 2012.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 16, 2012.

Assistance for Persons with Disabilities: Contact David Brenna by July 16, 2012, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes definition and requirements for preparation programs is [and] initiating professional growth plans so that chapter 181-79A WAC rules for license renewal are consistent with this section. Technical corrections.

Reasons Supporting Proposal: Stakeholder support.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

May 31, 2012

David Brenna

Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 10-08-030, filed 3/31/10, effective 12/1/11)

WAC 181-78A-010 Definition of terms. The following definitions shall be used in this chapter:

(1) "College or university" means any regionally accredited baccalaureate degree granting Washington institution of higher learning or cooperative group of such institutions which has or develops programs of preparation in education which are submitted to the professional educator standards board for approval.

(2) "Endorsement" means a specification placed on a certificate to indicate the subject area, grade level, and/or specialization for which the individual is prepared to teach.

(3) "Interstate compact" means the contractual agreement among several states authorized by RCW 28A.690.010 and 28A.690.020 which facilitates interstate reciprocity.

(4) "Program approval" means the approval by the professional educator standards board of an educator preparation program within Washington state.

(5) "Field experience" means a sequence of learning experiences which occur in actual school settings or clinical or laboratory settings. Such learning experiences are related to specific program outcomes and are designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor.

(6) "Regionally accredited institution of higher education" means a community college, college, or university

which is a candidate for accreditation or is accredited by one of the following regional accrediting bodies:

- (a) Middle States, Association of Colleges and Schools;
- (b) New England Association of Schools and Colleges;
- (c) North Central Association of Colleges and Schools;
- (d) Northwest Association of Schools and of Colleges and Universities;

(e) Southern Association of Colleges and Schools;

(f) Western Association of Schools and Colleges: Accrediting Commission for Junior and Senior Colleges.

(7) "Accredited institution of higher education," for purposes of credit on salary schedule per RCW 28A.415.024, means a regionally accredited institution of higher education, or a community college, college, or university, which is a candidate for accreditation or is accredited by the distance education and training council (DETC).

(8) "An approved performance-based educator preparation program" means a program that requires the candidate to demonstrate in multiple ways, over time, specific professional educator standards board required standards, criteria, knowledge and skills, including, where appropriate, evidence related to positive impact on student learning.

(9) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

(10) "Collaboration" (as used in WAC 181-78A-500 through 181-78A-540) means ongoing communication among the professional growth team members using a variety of formats (e.g., conferences, electronic mail, conference calls, etc.) to reach consensus regarding the content - Course work, experiences, competencies, knowledge and skills - Of the candidate's professional growth plan.

(11) "Professional growth team((-))"

~~((a) Principal/program administrator "professional growth team,")~~ for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a ~~((district representative or designee, a professional association representative, and a college or university advisor. "Professional growth team," for the purpose of renewal of the professional certificate, means a team comprised of the individual renewing the certificate and the superintendent, or superintendent designee or appointed representative.~~

~~((b) School counselor, school psychologist, and school social worker "professional growth team" for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a college/university))~~ program administrator/designee, and a colleague/peer from the same professional role specified by the candidate. ~~((A district representative is also required to serve on the pro-~~

professional growth team. Provided that, a candidate may petition the university to have membership of a district representative waived.)

(12) "~~(Individual)~~ Professional growth plan" means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-79A-207 and 181-78A-540.

(13) "Draft professional growth plan" means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-78A-540.

(14) "Culminating seminar" means that component of the approved professional certificate program in which the candidate for a professional certificate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance, and positive impact on student learning. The culminating seminar shall meet requirements set forth in WAC 181-78A-535(2).

AMENDATORY SECTION (Amending WSR 12-04-036, filed 1/27/12, effective 2/27/12)

WAC 181-78A-270 Approval standard—Knowledge and skills. Building on the mission to prepare educators who demonstrate a positive impact on student learning based on the Improvement of Student Achievement Act of 1993 (1209), the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(5):

(1) **TEACHER RESIDENCY CERTIFICATION.**

(a) **EFFECTIVE TEACHING.**

(i) Using multiple instructional strategies, including the principles of second language acquisition, to address student academic language ability levels and cultural and linguistic backgrounds;

(ii) Applying principles of differentiated instruction, including theories of language acquisition, stages of language, and academic language development, in the integration of subject matter across the content areas of reading, mathematical, scientific, and aesthetic reasoning;

(iii) Using standards-based assessment that is systematically analyzed using multiple formative, summative, and self-assessment strategies to monitor and improve instruction;

(iv) Implementing classroom/school centered instruction, including sheltered instruction that is connected to communities within the classroom and the school, and includes knowledge and skills for working with other;

(v) Planning and/or adapting standards-based curricula that are personalized to the diverse needs of each student;

(vi) Aligning instruction to the learning standards and outcomes so all students know the learning targets and their progress toward meeting them;

(vii) Planning and/or adapting curricula that are standards driven so students develop understanding and problem-solving expertise in the content area(s) using reading, written and oral communication, and technology;

(viii) Preparing students to be responsible citizens for an environmentally sustainable, globally interconnected, and diverse society;

(ix) Planning and/or adapting learner centered curricula that engage students in a variety of culturally responsive, developmentally, and age appropriate strategies;

(x) Using technology that is effectively integrated to create technologically proficient learners; and

(xi) Informing, involving, and collaborating with families/neighborhoods, and communities in each student's educational process, including using information about student cultural identity, achievement and performance.

(b) **PROFESSIONAL DEVELOPMENT.** Developing reflective, collaborative, professional growth-centered practices through regularly evaluating the effects of his/her teaching through feedback and reflection.

(c) **TEACHING AS A PROFESSION.**

(i) Participating collaboratively and professionally in school activities and using appropriate and respectful verbal and written communication.

(ii) Demonstrating knowledge of professional, legal, and ethical responsibilities and policies.

(d) **PERFORMANCE ASSESSMENT.** An approved preparation program for teachers shall require that each candidate engage in an assessment process approved by the professional educator standards board. The assessment will verify that the candidate for a residency teacher certificate can meet the teacher standards in (a), (b) and (c) of this subsection and understands teacher impact on student learning. All candidates shall exit the residency certificate program with a draft professional growth plan oriented toward the expectations for the professional certificate.

(2) **PRINCIPAL AND PROGRAM ADMINISTRATOR.**

(a) Effective September 1, 2010, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

Successful demonstration of standards.

(i) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by school and community stakeholders;

(ii) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading through advocating, nurturing, and sustaining district/school cultures and coherent instructional programs that are conducive to student learning and staff professional growth;

(iii) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(iv) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(v) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by acting with integrity, fairness, and in an ethical manner; and

(vi) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal and cultural context.

(b) Performance assessment. An approved preparation program for principals shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan oriented toward the expectations for the professional certificate.

(3) **SUPERINTENDENT.** An approved preparation program for superintendents shall require the candidate to demonstrate in course work and the internship the following standards:

(a) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by school and community stakeholders;

(b) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading through advocating, nurturing, and sustaining district/school cultures and coherent instructional programs that are conducive to student learning and staff professional growth;

(c) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(d) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(e) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by acting with integrity, fairness, and in an ethical manner; and

(f) A school administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(4) **SCHOOL COUNSELOR.** Effective September 1, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Foundations of the school counseling profession:** Certified school counselors (~~(design, deliver,)~~ develop, lead, and evaluate ((student-centered,)) a data-driven school counseling program((s)) that ((advance the mission of the school in light of recognized theory, research, exemplary models, community context, and professional standards)) is comprehensive, utilizes best practices, and advances the mission of the school.

(ii) ~~((School counseling and student competencies:))~~ **Student learning and assessments:** Certified school counselors (~~(integrate academic, career, and personal/social student competencies, including Washington state learning goals and essential academic learning requirements, into the school counseling program; teach counseling and guidance related material by using effective curriculum, instructional strategies, and instructional management; support teachers and parents in helping students develop knowledge and skill for learning, living, and working; and provide information about best practices to a school community.~~

(iii) ~~Human growth and development:~~ Certified school counselors apply comprehensive, in-depth knowledge of human growth and development to improve student learning, well-being, and to enhance resiliency; provide guidance to parents and teachers about developmentally appropriate practices that support students throughout their schooling experience) use their knowledge of pedagogy, child development, individual differences, learning barriers, and Washington state learning requirements to support student learning. They work effectively with other educators to monitor and improve student success.

(~~((iv))~~) (iii) **Counseling theories and technique:** Certified school counselors (~~(demonstrate an understanding of established and emerging counseling theories through effective use of individual and group techniques for working with a diverse population)) use a variety of research-based counseling approaches to provide prevention, intervention, and responsive services to meet the academic, personal/social and career needs of all students.~~

(~~((iv))~~) (iv) **Equity, fairness, and diversity:** Certified school counselors (~~(value and show respect for all members of the community; demonstrate fairness, equity, and sensitivity to every student, and advocate for equitable access to instructional programs and activities; use data for designing and implementing plans that remove barriers to learning; and help to close achievement gaps among subgroups of students)) understand cultural contexts in a multicultural society, demonstrate fairness, equity, and sensitivity to every stu-~~

dent, and advocate for equitable access to instructional programs and activities.

~~((vi))~~ **(v) School climate and collaboration:** Certified school counselors collaborate with colleagues, families, and community members to establish and foster a safe, inclusive, and nurturing learning environment for students, staff, and families ((and use strategies designed to prevent or resolve problems that could limit or diminish the capacity of students to learn and achieve at their highest levels.

~~(vii)~~ **Collaboration with school staff, family, and community:** Certified school counselors work collaboratively with school staff, families and community members to achieve common goals for the education of students, improvement of schools, and advancement of the larger community; know appropriate behavior management strategies and can team with staff and families to improve student achievement; and use their knowledge of community resources to make appropriate referrals based on the needs of students.

~~(viii)~~ **Information resources and technology:** Certified school counselors select and use informational resources and technology to facilitate delivery of a comprehensive school counseling program that meets student needs; and skillfully use technology to enhance communication.

~~(ix)~~ **Student assessment and program evaluation:** Certified school counselors understand the basic principles and purposes of assessment; collection and use of data; regularly monitor student progress and are able to communicate the purposes, design, and results of assessments to various audiences; know basic principles of research design, action research, and program evaluation for purposes of program improvement and accountability.

~~(x)~~ **Leadership and advocacy:** Certified school counselors support practices and policies that promote academic rigor skills for learning, living, and working; provide leadership that enhances student academic, career, and personal/social development and advocate for guidance as an integral part of a school's educational system; model practices that help students, parents, teachers, and policy makers understand how curriculum, instruction and assessment can help students see the relationship between effort, performance, and success beyond high school. Certified school counselors help promote understanding of graduation requirements, WASL scores, and development of the high school and beyond plan)).

~~((xi)~~ **Professionalism, ethics, and legal mandates:))**
(vi) Professional identity and ethical practice: Certified school counselors ((develop a professional identity congruent with knowledge of all aspects of professional functions, professional development, and state and national school counselor organizations. They adhere strictly to the profession's codes of ethics, especially those that have been established by the American Counseling Association (ACA), the American School Counselor Association (ASCA), the National Board for Certified Counselors (NBCC), and other relevant codes of ethics. They are familiar with state and federal policies, laws, and legislation relevant to school counseling.

~~(xii)~~ **Reflective practice:** Certified school counselors integrate knowledge, skills, and life experiences to respond effectively to new or unexpected critical events and situa-

tions; serve as change agents by using their understanding of schools as social, cultural and political systems within a larger organizational context; monitor practice with continuous, in-depth reflection; and make adjustments as needed)) engage in continuous professional growth and development and advocate for appropriate school counselor identity and roles. They adhere to ethical practices and to the Washington state and federal policies, laws, and legislation relevant to school counseling.

(b) Performance assessment. An approved preparation program for school counselors shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board ((and published by the office of the superintendent of public instruction)). The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan oriented to the expectations for the professional certificate.

(5) SCHOOL PSYCHOLOGIST. Effective September 1, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) Successful demonstration of standards:

(i) Data-based decision making and accountability:

Certified school psychologists have knowledge of varied models and methods of assessment ((that yield information useful in identifying strengths and needs, in understanding problems, and in measuring progress and accomplishments; use such models and methods)) as part of a systematic process ((to collect data and other information, translate assessment results into empirically based decisions about service delivery, evaluate the outcomes of services; and)) of data-based decision making that permeates every aspect of professional practice.

(ii) Consultation and collaboration: Certified school psychologists have knowledge of behavioral, mental health, collaborative, and((or)) other consultation models and methods and of their application to ((particular)) individual and contextual situations; collaborate effectively with others in planning and decision-making processes at the individual, group, and system levels.

~~(iii)~~ ~~((Effective instruction and development of cognitive))~~ **Interventions and instructional support to develop academic skills:** Certified school psychologists have knowledge of ((human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills;)) the influence of biological, cultural, linguistic, and early life experiences on academic development and collaborate with others((, develop appropriate cognitive and academic goals for students with different abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, instructional interventions and consultation)) to access, implement, and evaluate services at universal, targeted, and intensive levels using a variety of culturally and developmentally appropriate assessments.

~~(iv) ((**Socialization and development of**)) **Interventions and mental health services to develop social and life skills:** Certified school psychologists have knowledge of ~~((human)) biological, cultural, developmental ((processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills)), and social influences on behavior and mental health; collaborate with others, to develop ((appropriate behavioral, affective, adaptive, and social goals for students of varying abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, consultation, behavioral assessment/intervention, and counseling))~~ implement, and evaluate services that support socialization, cultural competence, learning, and mental health for positive impact on student learning.~~

~~(v) ((**Student diversity in development and**)) **School-wide practices to promote learning:** Certified school psychologists have knowledge of ~~((individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; demonstrate the sensitivity and skills needed to work with individuals of diverse characteristics and to implement strategies selected and/or adapted based on individual characteristics, strengths, and needs.~~~~

~~(vi) **School and systems organization, policy development, and climate:** Certified school psychologists have knowledge of general education, special education, and other educational and related services; understanding of schools and other settings as systems; work with individuals and groups to facilitate policies and practices that create and maintain safe, supportive, and effective learning environments for children and others)) general and special education, evidence-based practices, and equity pedagogy that responds to the needs of the learners; demonstrate skills to manage time effectively, respond to the learning needs of the individual students, and plan and measure positive impact on student learning.~~

~~((vii)) (vi) **Prevention((, crisis intervention, and mental health)) and responsive services:** Certified school psychologists have knowledge of ~~((human development and psychopathology and of associated biological, cultural, and social influences on human behavior; provide or contribute to prevention and intervention programs that promote the mental health and physical well-being of students))~~ principles of resilience and risk factors and demonstrate skills in multi-tiered delivery of services that respond to crisis and promote learning and mental health across cultures.~~

~~((viii) **Home/school/community**)) (vii) **School collaboration services:** Certified school psychologists have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery; ~~((work effectively with families, educators, and others in the community to promote and provide comprehensive services to children and families.))~~ facilitate family and school partnerships and interactions with community agen-~~

cies for enhancement of academic and social-behavior outcomes for children.

~~(viii) **Diversity in development and learning:** Certified school psychologists have knowledge of the principles and research related to culture, linguistic development, context, individual and role differences; work collaboratively to provide professional services that respond to the diverse needs of individuals and families; advocate for social justice and equity pedagogy.~~

~~(ix) **Research and program evaluation:** Certified school psychologists have knowledge of research, statistics, and evaluation methods; evaluate research, translate research into practice, and understand research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services at individual, group, and systems levels.~~

~~(x) ((**School psychology practice and development**)) **Legal, ethical, and professional practice:** Certified school psychologists have knowledge of the history and foundations of their profession; of ~~((various)) multiple service models and methods; ((of public policy development applicable to services to children and families; and)) of ethical, professional, and legal standards, including the Washington Administrative Code and federal and state accountability legislation; practice in ways that are consistent with applicable standards(~~, are involved in their profession, and have the knowledge and skills needed to acquire career-long professional development~~); engage in responsive ethical and professional decision-making; and apply professional work characteristics.~~~~

~~(xi) ((**Information technology**)) **Emerging and assistive technologies:** Certified school psychologists have knowledge of ~~((information sources and technology relevant to their work; access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services))~~ and access, implement, and evaluate technology relevant to their work and to the instructional needs of individuals with disabilities.~~

~~(b) **Performance assessment.** An approved preparation program for school psychologists shall require that each candidate engage in an assessment process using the standards-based benchmarks approved and published by the professional educator standards board ((and published by the office of the superintendent of public instruction)). The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan oriented to the expectations for the professional certificate.~~

AMENDATORY SECTION (Amending WSR 09-16-053, filed 7/29/09, effective 8/29/09)

WAC 181-78A-507 Overview—Principal/program administrator professional certificate programs. By September 1, 2007, ~~((all colleges and universities offering a))~~ professional certificate programs for principals/program administrators must be in compliance with the new program standards. To obtain a professional certificate, the residency principal or assistant principal will need to complete a professional educator standards board-approved professional certifi-

icate program and document three contracted school years of employment as a principal or assistant principal; the residency program administrator will need to complete a professional educator standards board-approved professional certificate program.

The professional certificate for principals/program administrators requires successful demonstration of six standards at the professional certification benchmark levels, or above, and the candidate will need to provide evidence that he/she has had a positive impact on student learning.

The candidate with the approved program shall develop an individual professional growth plan oriented toward the expectations for the professional certificate that shall address the six knowledge and skills standards, focus on activities that enhance student learning, and be informed by the performance evaluation process, and an analysis of the administrative context and assignment.

AMENDATORY SECTION (Amending WSR 07-19-056, filed 9/14/07, effective 10/15/07)

WAC 181-78A-509 Overview—Educational staff associate—School counselor/school psychologist(~~/school social worker~~) professional certificate programs. By September 1, 2008, all (~~(colleges and universities offering)~~) ESA professional certificate programs must be in compliance with the new program standards. To obtain a professional ESA certificate, individuals will need to hold a valid ESA residency certificate, be employed in his/her ESA role in a public school district, professional educator standards board-approved private school or state agency providing educational services for students, and complete a professional educator standards board-approved professional ESA certificate program in his/her ESA role.

(1) The professional certificate requires successful demonstration of the ESA role standards at the professional certificate benchmark levels, or above, and the candidate will need to provide evidence that he/she has had a positive impact on student learning.

(2) The candidate shall develop an individual professional growth plan (~~(to be approved by the professional education advisory board (PEAB) or the professional growth team (PGT))~~). The individual growth plan shall be based on an assessment of the candidate's ability to demonstrate standards at the professional benchmark level and evidence of a positive impact on student learning.

WSR 12-12-045
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed May 31, 2012, 3:06 p.m.]

Continuance of WSR 12-09-086.

Preproposal statement of inquiry was filed as WSR 12-05-106.

Title of Rule and Other Identifying Information: Chapter 16-470 WAC, Quarantine—Agricultural pests, the department is proposing to modify the apple maggot quarantine boundaries by:

(1) Adding a portion of Chelan County to the quarantine; and

(2) Decreasing the size of the quarantine portion of Kittitas County.

Hearing Location(s): Washington State Department of Agriculture, Fruit and Vegetable Inspection, 270 9th Street N.E., Main Conference Room, East Wenatchee, WA 98802, on June 8, 2012, at 11:00 a.m.

Date of Intended Adoption: June 15, 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 June 8, 2012.

Assistance for Persons with Disabilities: Contact Henri Gonzales by June 1, 2012, TTY (800) 833-6388.

Statutory Authority for Adoption: RCW 17.24.041 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 17.24 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Brad White, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-2071.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

May 31, 2012

Mary A. Martin Toohey
Assistant Director

WSR 12-12-056
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 10-17—Filed June 5, 2012, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-04-085.

Title of Rule and Other Identifying Information: The department of ecology is proposing to adopt new chapter 173-901 WAC, Better brakes. This rule is necessary to implement chapter 70.285 RCW, relating to brake friction materials. Chapter 70.285 RCW phases copper, asbestos, and several heavy metals out of brake friction materials.

Hearing Location(s): **First Hearing:** Primary Location: Ecology N.W. Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008-5452; Teleconference Location: Ecology Central Regional Office, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902-3452; on July 10, 2012; doors open at 6:00 p.m.; workshop starts at 6:20 p.m.; formal hearing starts at 7:00 p.m.

Second Hearing: Primary Location: Ecology Headquarters Building, 300 Desmond Drive S.E., Lacey, WA 98503; Teleconference Location: Ecology Eastern Regional Office, North 4601 Monroe, Spokane, WA 99205-1295; on

July 12, 2012; doors open at 6:00 p.m.; workshop starts at 6:20 p.m.; formal hearing starts at 7:00 p.m.

Date of Intended Adoption: October 17, 2012.

Submit Written Comments to: Ian Wesley, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail ian.wesley@ecy.wa.gov, fax (360) 407-6715, by July 19, 2012.

Assistance for Persons with Disabilities: If you need this document or other rule documents in a format for the visually impaired, call the hazardous waste and toxics reduction program at (360) 407-6700 by July 1, 2012. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

Assistance for Persons with Disabilities: Contact

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule implements chapter 70.285 RCW and addresses:

- Criteria that manufacturers of brake friction material must follow to certify compliance using third party accredited laboratories;
- Requirements relating to product and packaging markings to appear on brake friction material;
- Requirements for how and what data must be submitted regarding the concentration of copper and other metals in brake pads sold or offered for sale in Washington state;
- A process by which companies may apply for an exemption from certain requirements of chapter 70.285 RCW; and
- Other issues necessary to implement chapter 70.285 RCW.

Reasons Supporting Proposal: The proposed rule is necessary to implement chapter 70.285 RCW which directs ecology to work with stakeholders to develop compliance criteria through rule making. The proposal is the result of an intensive negotiated stakeholder process. Ecology convened the better brakes workgroup consisting of representatives of brake friction material manufacturers; automobile manufacturers; distributors, retailers and installers of brake friction materials; environmental groups; the Society of Automotive Engineers; and others to develop the proposed rule. The workgroup relied on a consensus based approach to develop this proposal and the workgroup reach[ed] consensus on the proposed rule.

Statutory Authority for Adoption: Chapter 70.285 RCW.

Statute Being Implemented: Chapter 70.285 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ian Wesley, Lacey, (360) 407-6747.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The businesses that might be affected by the proposed rule are not small businesses. Small businesses only prospectively benefit from the proposed rule. A memo has been included in the rule file explaining the rationale for this conclusion, as well as docu-

menting the degree of small business and local government involvement in the rule-making process.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Ian Wesley, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6747, fax (360) 407-6715, e-mail ian.wesley@ecy.wa.gov.

June 4, 2012

Polly Zehm

Deputy Director

Chapter 173-901 WAC

BETTER BRAKES

NEW SECTION

WAC 173-901-010 Purpose. (1) This chapter implements chapter 70.285 RCW, which mandates a phase out of the use of copper, asbestos, and several heavy metals in brake friction material that is sold or offered for sale in Washington state.

(2) As brake friction material wears down, copper and other metals are deposited on roadways, where they are washed into our streams and rivers. Copper is highly toxic to fish and other aquatic species. Young salmon are especially susceptible to the effects of copper. Removing copper and other toxic metals from brake materials will help to cleanup water bodies around the state.

NEW SECTION

WAC 173-901-020 Applicability—Who must comply with the chapter? This chapter applies to:

(1) Manufacturers, wholesalers, distributors, installers, and retailers of brake friction materials that are sold or offered for sale in Washington state; and

(2) Manufacturers, wholesalers, distributors, and retailers of motor vehicles containing brake friction materials that are sold or offered for sale in Washington state.

NEW SECTION

WAC 173-901-030 Applicability—Which friction materials must comply with this chapter? (1) This chapter applies to brake friction materials designed for use on motor vehicles, as defined in RCW 46.04.320, that are subject to licensing requirements under RCW 46.16A.030.

(2) Some brake friction materials are exempted from this chapter by chapter 70.285 RCW. These include brake friction materials designed for use on:

(a) Motorcycles as defined in RCW 46.04.330;

(b) Motor vehicles employing internal-closed-oil-immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions;

(c) Military combat vehicles;

(d) Race cars, dual-sport vehicles, or track day vehicles, whose primary use is for off-road purposes and are permitted under RCW 46.16A.320;

(e) Collector vehicles, as defined in RCW 46.04.126; or
 (f) Motor vehicle brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(3) Some brake friction materials are exempt from certain requirements of this chapter. These include:

(a) Brake friction material manufactured prior to 2015 is exempt from WAC 173-901-050(1) and 173-901-060. This exemption expires on January 1, 2025;

(b) Brake friction material manufactured prior to 2021 is exempt from WAC 173-901-050(2). This exemption expires on January 1, 2031;

(c) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2015, is exempt from WAC 173-901-050 (1) and (2); and

(d) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2021, is exempt from WAC 173-901-050(2).

(4) Friction materials that can be used on both exempted and nonexempted vehicles must comply with this chapter unless they are clearly labeled as designed for a specific use that is exempted from the requirements of chapter 70.285 RCW and this chapter.

NEW SECTION

WAC 173-901-040 Definitions. (1) **"Brake friction material"** means that part of a motor vehicle brake designed to retard or stop the movement of a motor vehicle through friction against a rotor made of a more durable material. "Rotor" means the rotating portion of a motor vehicle brake system including, but not limited to, brake disks and brake drums.

(2) **"Brake friction material manufactured as part of an original equipment service contract"** means brake friction material that:

(a) Is provided as service parts originally designed for and using the same brake friction material formulation sold with a new motor vehicle;

(b) Is manufactured as part of a contract between a vehicle manufacturer and a brake friction material manufacturer that requires the brake friction material manufacturer to provide brakes with the identical brake friction material formulation to those that originally came with a new motor vehicle; and

(c) If there are any changes to the design of the service part's brake friction formulation, or if the brake friction material manufacturer sells the parts to any party other than the vehicle manufacturer, the product is no longer brake friction material manufactured as part of an original equipment service contract.

(3) **"Certification mark"** has the same meaning as in 15 U.S.C. Sec. 1127.

(4) **"Department"** means the department of ecology.

(5) **"Industry-sponsored registrar"** means an organization or organizations designated by one or more of the entities listed in WAC 173-901-020 to certify and register com-

pliance with the requirements of chapter 70.285 RCW and this chapter on behalf of the designating entity or entities.

(6) **"ISO"** means the International Standards Organization.

(7) **"Manufacturer"** means a person manufacturing or assembling motor vehicles or motor vehicle equipment, or importing motor vehicles or motor vehicle equipment for resale. This chapter places differing requirements on manufacturers of motor vehicles and manufacturers of brake friction materials. In each instance the term "manufacturer" is used, this chapter identifies which type of manufacturer is referred to.

(8) **"Motor vehicle"** does not include:

(a) Motorcycles as defined in RCW 46.04.330;

(b) Motor vehicles employing internal-closed-oil-immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions;

(c) Military combat vehicles;

(d) Race cars, dual-sport vehicles, or track day vehicles, whose primary use is for off-road purposes and are permitted under RCW 46.16A.320; or

(e) Collector vehicles, as defined in RCW 46.04.126.

(9) **"Motor vehicle brake"** means an energy conversion mechanism used to retard or stop the movement of a motor vehicle. Motor vehicle brake does not include brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(10) **"Regulated constituents"** means:

(a) Asbestiform fibers;

(b) Cadmium and its compounds;

(c) Chromium (VI)-salts;

(d) Lead and its compounds; and

(e) Mercury and its compounds.

(11) **"SAE"** means the SAE International.

(12) **"Small volume motor vehicle manufacturer"** means a manufacturer of motor vehicles with Washington annual sales of less than one thousand new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines based on the average number of vehicles sold for the three previous consecutive model years.

(13) **"Specified concentrations"** means, for each of the following:

(a) Asbestiform fibers, 0.1 percent by weight;

(b) Cadmium and its compounds, 0.01 percent by weight;

(c) Chromium (VI)-salts, 0.1 percent by weight;

(d) Lead and its compounds, 0.1 percent by weight;

(e) Mercury and its compounds, 0.1 percent by weight; and

(f) Beginning January 1, 2021, for copper and its compounds, 5 percent by weight.

(14) **"Vehicle dealer"** has the same meaning as defined in RCW 46.70.011.

(15) **"Wholesaler, distributor, installer, and retailer"** includes any person that sells or offers to sell brake friction materials to consumers in the state of Washington, and any person that sells or offers to sell brake friction materials to such person. "Selling or offering to sell brake friction mate-

rial" includes installing or offering to install brake friction material in a vehicle for a fee.

NEW SECTION

WAC 173-901-050 Prohibition on the sale of certain brake friction materials. (1) Beginning January 1, 2015, no manufacturer, wholesaler, distributor installer, or retailer of brake friction material nor any manufacturer of motor vehicles may sell or offer for sale brake friction material in Washington state that:

(a) Contains asbestiform fibers in concentrations exceeding 0.1 percent by weight;

(b) Contains cadmium and its compounds in concentrations exceeding 0.01 percent by weight;

(c) Contains chromium (VI)-salts in concentrations exceeding 0.1 percent by weight;

(d) Contains lead and its compounds in concentrations exceeding 0.1 percent by weight; or

(e) Contains mercury and its compounds in concentrations exceeding 0.1 percent by weight.

(2) Beginning January 1, 2021, no manufacturer, wholesaler, retailer, or distributor of brake friction material nor any manufacturer of motor vehicles may sell or offer for sale brake friction material in Washington state containing more than five percent copper and its compounds by weight.

(3) Exemptions:

(a) Brake friction material manufactured prior to 2015 is exempt from subsections (1) and (2) of this section for the purposes of clearing inventory. This exemption expires January 1, 2025.

(b) Brake friction material manufactured prior to 2021 is exempt from subsection (2) of this section for the purposes of clearing inventory. This exemption expires January 1, 2031.

(c) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2015, is exempt from subsections (1) and (2) of this section. For more information about parts manufactured as part of an original equipment service contract see WAC 173-901-150.

Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2021, is exempt from subsection (2) of this section. For more information about parts manufactured as part of an original equipment service contract see WAC 173-901-150.

NEW SECTION

WAC 173-901-060 Self-certification of compliance.

(1) Manufacturers of brake friction material must certify to the department that any brake friction material that is sold or offered for sale in Washington state complies with the requirements of chapter 70.285 RCW and this chapter using the following process:

(a) **Step 1:** Submit a sample of each brake friction material for laboratory testing. A brake friction material manufacturer may either:

(i) Submit a brake friction material sample directly to a laboratory accredited in accordance with WAC 173-901-070 for testing in accordance with WAC 173-901-080; or

(ii) Submit a sample of brake friction material to an industry-sponsored registrar that will send the sample to a laboratory accredited in accordance with WAC 173-901-070 for testing in accordance with WAC 173-901-080, on behalf of the brake friction material manufacturer.

(b) **Step 2:** Ensure that the laboratory provides laboratory testing results for each brake friction material directly to an industry-sponsored registrar. The brake friction material manufacturer may review the testing results prior to the laboratory sending the results to the registrar. However, the manufacturer must ensure that the laboratory submits the results from all testing conducted on a given friction material formula. All testing and reporting of results must be carried out in accordance with WAC 173-901-080.

(c) **Step 3:** Ensure that an industry-sponsored registrar assigns each brake friction material that complies with the requirements of chapter 70.285 RCW and this chapter a unique identification code ending in the appropriate environmental compliance marking as described in WAC 173-901-100.

(d) **Step 4:** Ensure that an industry-sponsored registrar lists each brake friction material that complies with the requirements of this chapter on the internet in a publicly accessible and searchable data base or list. A link to this data base or list must be provided to the department and the department must be notified if the internet address of this data base or list changes.

(e) **Step 5:** Ensure that self-certification documentation is submitted to an industry-sponsored registrar for transmission to the department on behalf of the brake friction material manufacturer. Self-certification documentation must:

(i) Include the contact information for the brake friction material manufacturer;

(ii) Include a signed and dated statement by an authorized representative of the brake friction material manufacturer declaring under penalty of perjury according to the laws of the state of Washington that all brake friction materials bearing the listed unique identification codes are of the same composition as those submitted to the laboratory and meet all of the requirements of chapter 70.285 RCW and this chapter; and

(iii) Be in a form and format prescribed by the department.

(f) **Step 6:** Ensure that the registrar then transmits the self-certification documentation and laboratory testing results, on behalf of the brake friction material manufacturer, to the department. Self-certification documentation and test results must be transmitted in a quarterly report. The report must:

(i) Be in an electronic form and format prescribed by the department;

(ii) Contain a table showing each friction material sold or offered for sale in Washington state as identified by its unique identification codes and the cumulative average of all laboratory testing results for a given friction material demonstrating that the identified friction material complies with the requirements of chapter 70.285 RCW and this chapter. This information must be reported in accordance with WAC 173-901-080(5); and

(iii) Contain the self-certification documentation submitted to the registrar.

(g) **Step 7:** Ensure that brake friction material and its packaging is marked with proof of certification in accordance with WAC 173-901-090.

(2) There is no need to submit self-certification documentation for individual brake friction materials to the department between the regular quarterly reports.

(3) Manufacturers of brake friction material may use one set of testing results and self-certification documentation, and a single unique identification code for multiple products using an identical brake friction material formulation.

(4) Manufacturers of brake friction material are responsible for the accuracy of all information transmitted to the department. Manufacturers of brake friction materials may implement quality controls not otherwise specified above to ensure the accuracy of information transmitted to the department.

(5) Provided that each step is completed, manufacturers may alter the order of the process, in so far as the preceding steps are not required for the completion of subsequent steps. For example, a unique identification code may be issued at the beginning of the process or the industry-sponsored registrar may add compliant brake friction materials to the publicly available data base or list after the self-certification documentation has been submitted to the department.

(6) Prerequisites for certification:

(a) A manufacturer of brake friction material must file an initial baseline report as described in WAC 173-901-110, or obtain a waiver from this report under WAC 173-901-110(7), before it may certify compliance with the requirements in chapter 70.285 RCW and this chapter.

(b) A manufacturer of brake friction material that has received a penalty under this chapter may not certify other products until the penalty is paid.

(7) **Updating certification:** Manufacturers of brake friction material must recertify each previously certified brake friction material that is still being manufactured at least once every three years.

When recertifying brake friction materials, manufacturers of brake friction materials must submit updated self-certification documentation and new laboratory testing results. However, brake friction materials containing more than five percent copper, but that meets the requirements for the regulated constituents, do not need to be submitted for new testing to be recertified prior to 2021.

(8) **Exemption:** Brake friction material manufactured prior to 2015 is exempt from this section.

(9) **Optional certification:** A manufacturer of brake friction material that is not required to comply with the requirements of this law may certify compliance and mark brake friction materials in accordance with this chapter, provided that it certifies the product in accordance with this section.

NEW SECTION

WAC 173-901-070 Which laboratories must a manufacturer of brake friction material use to certify compliance with this chapter? (1) To certify compliance, a manu-

facturer of brake friction material must ensure that its brake friction material is tested by a laboratory that is qualified and equipped for testing products in accordance with the SAE 2975:2001 testing method, and that has been found to be competent to perform the specific testing methods described by SAE 2975:2011 by maintaining accreditation:

(a) To the ISO 17025:2005 standard by a lab accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Multilateral Recognition Arrangement, as of the effective date of this chapter;

(b) By any accreditation body that is recognized by the National Environmental Laboratory Accreditation Program, as of the effective date of this chapter; or

(c) By the Washington state environmental laboratory accreditation program under RCW 43.21A.230 and chapter 173-50 WAC.

(2) A manufacturer of brake friction material may certify compliance using testing results generated by a laboratory accredited to an alternative standard or by a laboratory accreditation body not listed in subsection (1) of this section if the alternative standard or accreditation body is approved by the department in advance of testing results being used for certification. The brake friction material manufacturer, laboratory, or laboratory accreditation body proposing the alternative shall be responsible for generating data sufficient to demonstrate to the department that these alternatives are equivalent to or better than the standards or accreditation bodies listed in subsection (1) of this section. Once an alternative laboratory standard or accreditation body has been approved by the department, any brake friction material manufacturer may use the standard or accredited laboratories for certification.

NEW SECTION

WAC 173-901-080 How to test brake friction materials and report results. (1) The manufacturer of brake friction material offered for sale in Washington state must ensure that its brake friction materials sold or offered for sale in Washington state are tested:

(a) By a laboratory accredited in accordance with WAC 173-901-070; and

(b) Using the testing protocol SAE 2975:2011 or an alternative testing method or protocol approved under subsection (9) of this section.

(2) Manufacturers of brake friction material must ensure that brake friction material is tested for each of the following:

- (a) Antimony;
- (b) Asbestiform fibers;
- (c) Cadmium;
- (d) Chromium (VI);
- (e) Copper;
- (f) Lead;
- (g) Mercury;
- (h) Nickel; and
- (i) Zinc.

(3) **Who is responsible for the accuracy of laboratory testing results?** The manufacturer of brake friction material is responsible for the accuracy of the laboratory testing results reported to the department.

(4) **How many times does each friction material need to be tested?** As SAE 2975:2011 recommends, all testing for the regulated constituents, copper, nickel, zinc, and antimony must be done at least in triplicate.

(a) Due to the margin of error in the test method, additional testing may be required to demonstrate that the brake friction material contains less than the specified concentrations of each of the regulated constituents and copper. For example, if a pad contains 4.9 percent copper, the first round of testing results could come back showing the average testing result is greater than 5 percent copper by weight. Consequently, these results would not be suitable for demonstrating compliance and the brake friction material would need to be retested in accordance with SAE 2975:2011. The additional testing results would then need to be calculated into the cumulative average of all testing results conducted on a given formula. To be used for certification, the cumulative average of all testing must show that the brake friction material contains less than the specified concentrations of the regulated constituents and copper.

(b) If an approved alternative testing method or protocol is used, all testing must be done in accordance with the alternative testing method or protocol.

(5) **How must laboratory testing results be reported to the department?**

(a) All laboratory testing results for a friction material must be transmitted from the testing laboratory directly to an industry-sponsored registrar.

(b) The cumulative average of all testing done on a given brake friction material formulation must be reported to the department, via the industry-sponsored registrar, on behalf of the brake friction material manufacturer.

(c) The cumulative average must show that the concentration of the regulated constituents and copper are less than the specified concentrations.

(6) **What happens if laboratory error occurs?** If laboratory error is suspected, the laboratory may, at its discretion and in accordance with its standard operating procedures, choose to retest the brake friction material. The results from the testing in which the error occurred do not need to be included in the testing results transmitted to the industry-sponsored registrar or in the testing reported to the department.

(7) **How long must a manufacturer of brake friction material retain copies of laboratory testing results used for certification?** A manufacturer of brake friction materials must maintain copies of laboratory testing results for a period of ten years after the date of certification and must provide copies of these documents to the department upon its request.

(8) **May a manufacturer of brake friction material certify compliance using testing results derived using a method or protocol other than SAE 2975:2011?** A manufacturer of brake friction material may use alternative testing and sampling preparation methods if the alternative is approved by the department in advance of using these testing methods or protocols for certification. The brake friction material manufacturer proposing the alternative shall be responsible for generating data sufficient to demonstrate to the department that the alternative is at least as effective as SAE 2975:2011. Once an alternative testing method or pro-

ocol has been approved by the department, any manufacturer of brake friction material may use the approved, alternative method for certification. The department may only approve alternative testing procedures:

(a) When a manufacturer of brake friction material proposes an alternative testing method or protocol;

(b) When the brake friction material manufacturer has provided sufficient evidence to demonstrate that the proposed alternative is at least as effective as SAE 2975:2011; and

(c) When the proposed alternative method or protocol is publicly available.

NEW SECTION

WAC 173-901-090 Marked proof of certification. (1)

What is marked proof of certification? Marked proof of certification is a certification mark appearing on brake friction material packaging coupled with a unique identification code and environmental compliance marking, described in WAC 173-901-100, on the brake friction material. The certification mark on the product serves to notify end users of the brake friction material that the product is compliant with the law. While the identification code and environmental marking is used to link the product to laboratory testing results and self-certification documentation, together the code and certification mark provide proof that the brake friction material meets the requirements of chapter 70.285 RCW and this chapter. When a brake friction material manufacturer marks a brake friction material or its packaging with proof of certification the manufacturer is certifying that:

(a) The brake friction material meets the applicable criteria for the environmental compliance marking, described in WAC 173-901-100, with which it has been marked;

(b) The brake friction material has been registered with an industry-sponsored registrar; and

(c) Self-certification documentation has been submitted to the department.

(2) **When must brake friction material and its packaging be marked?** Brake friction material that is manufactured on or after January 1, 2015, and is sold or offered for sale in Washington state must have marked proof of certification on the brake friction material and its packaging.

(3) **How must brake friction material be marked?** A manufacturer of brake friction material must:

(a) Mark its brake friction material in accordance with SAE J866:2012. This chapter does not require manufacturers to mark the hot and cold coefficients of friction as specified in the SAE J866:2012. Note: These markings are included in the J866 standard because other states have regulations that require brake friction materials to be marked with the hot and cold coefficients of friction.

(b) Ensure the unique identification code issued by an industry-sponsored registrar is the same as the code marked on brake friction material in accordance with SAE J866:2012;

(c) Ensure that the unique identification code is a code that contains the appropriate environmental compliance marking described in WAC 173-901-100. This marking is also described in SAE J866:2012;

(d) Mark its brake friction material with the last two digits of the year the material was manufactured as described in SAE J866:2012; and

(e) Ensure that the marking on the brake friction material is legible.

(4) **May a manufacturer of brake friction material mark a brake friction material with additional information such as batch code information?** Yes. A manufacturer of brake friction material may mark brake friction material with additional information such as batch code information. Batch code information must be marked in accordance with SAE J866:2012.

(5) **How must brake friction material packaging be marked?** Brake friction material packaging must be marked with a certification mark. The certification mark must be registered with the United States Patent and Trademark Office and it must be intended to certify that the brake friction material contained in the package meets the requirements of chapter 70.285 RCW and this chapter. Brake friction material packaging may be marked with a certification mark that is owned by an industry-sponsored registrar.

(6) **Must brake friction materials that are not required to comply with this chapter be marked?** There is no requirement that these friction materials be marked. A brake friction material manufacturer may mark products that are not required to comply with the requirements of the law with "WX." Manufacturers of brake friction material that is not required to comply with the requirements of the law may certify their product and mark it in accordance with this section.

NEW SECTION

WAC 173-901-100 Environmental compliance marking. (1) **What is the environmental compliance marking?** The environmental compliance marking is the last letter or last two letters in the unique identification code marked on brake friction materials. It must be an "A," "B," "N," or "WX," and it allows a person to determine the level of environmental compliance of the brake friction material.

(2) **What does the environmental compliance marking "A" indicate?** An "A" indicates that the brake friction material manufacturer has submitted self-certification documentation and laboratory testing results showing the brake friction material does not contain any of the following regulated constituents in amounts exceeding the specified concentrations:

- (a) Asbestiform fibers, 0.1 percent by weight;
- (b) Cadmium and its compounds, 0.01 percent by weight;
- (c) Chromium (VI)-salts, 0.1 percent by weight;
- (d) Lead and its compounds, 0.1 percent by weight; or
- (e) Mercury and its compounds, 0.1 percent by weight.

(3) **What does the environmental compliance marking "B" indicate?** A "B" indicates that the brake friction material manufacturer has submitted self-certification documentation and laboratory testing results showing the brake friction material does not contain any of the compounds listed in subsection (2) of this section in amounts exceeding

the specified concentrations and that the brake friction material contains between .5 and 5 percent copper by weight.

(4) **What does the environmental compliance marking "N" indicate?** An "N" indicates that the brake friction material manufacturer has submitted self-certification documentation and laboratory testing results showing the brake friction material does not contain any of the compounds listed in subsection (2) of this section in amounts exceeding the specified concentrations and that the brake friction material contains less than .5 percent copper by weight.

(5) **What does the environmental compliance marking "WX" indicate?** A "WX" indicates that the brake friction material has either been granted an exemption from certain requirements of chapter 70.285 RCW and this chapter, under WAC 173-901-140, or it is designed for use on a vehicle that is not required to meet the requirements of chapter 70.285 RCW and this chapter. A brake friction material marked with a "WX" may only be installed on the vehicles or type of vehicles for which it is designed. It must not be installed on a vehicle that is required to comply with chapter 70.285 RCW and this chapter.

NEW SECTION

WAC 173-901-110 Reporting requirements for brake friction material manufacturers. (1) After January 1, 2015, self-certification documentation submitted to the department, under WAC 173-901-060, will fulfill brake friction materials manufacturers' reporting requirements, under RCW 70.285.070.

(2) By January 1, 2013, manufacturers of brake friction material offered for sale in Washington state are required to file an initial baseline report with the department.

(3) For the initial baseline report, due by January 1, 2013, each manufacturer of brake friction material must report the following information to the department, in a form and format prescribed by the department:

(a) Contact information for the brake friction material manufacturer, including the mailing address, phone number, and e-mail address of a representative of the company who can serve as a point of contact for the department;

(b) A table containing the following information:

(i) Each friction material formula manufactured, during 2011, identified by a code assigned by the brake friction material manufacturer. While manufacturers of brake friction material may assign the code, the code must conform to data specifications outlined by the department, including the length of the code, the characters that may be in the code, or other data specifications identified by the department.

(ii) The percent by weight concentrations of copper, nickel, zinc, and antimony in each formula manufactured by the brake friction material manufacturer. These concentrations must be reported using the guidelines in subsection (4) of this section. For each formula, whether it is used on light vehicles, heavy/commercial vehicles, or both.

(4) **How will manufacturers of brake friction material determine concentrations of copper, nickel, zinc, and antimony in brake friction materials?**

(a) For the initial report, manufacturers of brake friction material are not required to conduct laboratory tests on brake

friction materials to determine the concentrations of copper, nickel, zinc, and antimony. A brake friction material manufacturer may report the concentrations of copper, nickel, zinc, and antimony, by percent by weight:

(i) Using the design intent or formula of brake friction materials; and

(ii) If necessary, consulting with suppliers to determine the concentrations of these elements in raw materials.

(b) Brake friction material manufacturers must report the average concentration based on the amount of the element present in the brake friction material. For example: Only 79.9 percent of the amount of copper oxide (CuO) used in a brake friction material formula would be reported as copper.

(c) Averages, reported to the department, must be rounded to the hundredth of a percent.

(5) **How should brass be calculated into the average reported to the department?** When possible brake friction material manufacturers should calculate the average concentrations of copper, nickel, zinc, and antimony using the actual amounts of these elements in the brass they are using. If this information cannot be obtained, the brake friction material manufacturer may assume that the brass it is using contains seventy percent copper and thirty percent zinc, by weight.

(6) **How will brake friction material manufacturers transmit the initial report to the department?** Initial baseline reporting must follow a process similar to the certification procedure outlined in WAC 173-901-060. Initial baseline reporting must follow the following process:

(a) **Step 1:** Manufacturers of brake friction material must determine the concentrations of copper, nickel, zinc, and antimony in each brake friction material formulation they manufacture;

(b) **Step 2:** Manufacturers of brake friction material must transmit this information to an industry-sponsored registrar;

(c) **Step 3:** Manufacturers of brake friction material must ensure that the industry-sponsored registrar transmits this information to the department in an electronic form and format prescribed by the department.

(7) **How will new market entrants fulfill the baseline reporting prerequisite for certification?**

(a) Manufacturers of brake friction material offered for sale in Washington state are required to file a baseline report by January 1, 2013.

(b) Brake friction material manufacturers that do not currently offer products for sale in Washington state or that fail to file a report by January 1, 2013, may not certify their brake friction material until they file a baseline report.

(c) Manufacturers of brake friction materials seeking to certify brake friction material manufactured prior to January 1, 2016, must provide the baseline report described in this section.

(d) Manufacturers of brake friction material seeking to certify brake friction materials manufactured on or after January 1, 2016, must provide the same baseline report described in this section except that it shall be for brake friction materials manufactured during 2014 as opposed to 2011.

(e) Manufacturers of brake friction material that did not manufacture brake friction materials sold or offered for sale in Washington state between January 1, 2011, and December

31, 2014, must certify to this fact and the department may waive the baseline reporting prerequisite for certification.

NEW SECTION

WAC 173-901-120 How will the department establish baseline concentration levels for copper, antimony, nickel, and zinc? (1) By July 1, 2013, the department will calculate the mean concentration of copper, antimony, nickel, and zinc in brake friction material from the data submitted by brake friction material manufacturers, under WAC 173-901-110, for light and heavy/commercial vehicles.

(2) The department must also calculate for both light and heavy/commercial vehicles how many formulations have:

(a) Less than .5 percent copper by weight;

(b) Between .5 and 5 percent copper by weight; and

(c) More than 5 percent copper by weight.

(3) The department must also calculate similar information as outlined in subsection (2) of this section for antimony, nickel, and zinc. However, the specific ranges will not be determined until after the data has been reported.

NEW SECTION

WAC 173-901-130 Applying for an exemption. (1) Applicability. Manufacturers of brake friction material or motor vehicles may apply to the department for an exemption from the requirements of this chapter. Exemptions are limited to:

(a) Small volume vehicle manufacturers;

(b) Specific motor vehicle models; or

(c) Special classes of vehicles, such as fire trucks, police cars, and heavy or wide-load equipment hauling vehicles.

(2) **Criteria for receiving an exemption.** To receive an exemption the manufacturer must demonstrate that complying with the requirements of chapter 70.285 RCW and this chapter:

(a) Is not feasible;

(b) Does not allow compliance with safety standards; or

(c) Causes significant financial hardship.

(3) **Application contents.** The application must include:

(a) The contact information, including the name, phone, e-mail, and mailing address, for a representative of the manufacturer seeking the exemption who can answer questions about the application;

(b) A detailed description of:

(i) The specific motor vehicle model or the class of motor vehicle for which the brake friction material is designed;

(ii) The special needs or characteristics of the vehicle(s) that require the use of noncompliant brake friction material;

(iii) Brake friction material for which the exemption is sought including the concentration of the regulated constituent(s) and copper in the brake friction material for which the applicant is seeking an exemption; and

(iv) The purpose of the regulated constituent(s) and copper in the brake friction material.

(c) An estimate of the number of vehicles in Washington state that would be able to use the exempted brake friction material and a description of the method used to derive this estimate;

(d) A statement that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship;

(e) Detailed documentation that reasonably demonstrates that the statement in subsection (3)(d) of this section is true and correct. Documentation must at a minimum include:

(i) A list of all known brake friction materials that meet the requirements of chapter 70.285 RCW and this chapter;

(ii) An analysis of why these brake friction materials are not viable options for the specific vehicle model, class of vehicle, or small volume vehicle manufacturer for which the exemption is sought; and

(iii) If the applicant is seeking an exemption on the grounds that complying with the requirements of this chapter would cause a significant financial hardship, the applicant must submit financial documents demonstrating this to be the case.

(f) A description of the efforts the manufacturer has undertaken to reach compliance with chapter 70.285 RCW prior to seeking an exemption; and

(g) The signature of an authorized representative of the manufacturer and an accompanying dated statement that declares under penalty of perjury according to the laws of the state of Washington that the information contained in the application is accurate.

(4) Applicants must submit an electronic copy of the application to the department.

NEW SECTION

WAC 173-901-140 Process for reviewing an exemption application. (1) Upon receipt of an exemption application the department will review the application to determine if the application is complete. To be complete an application must include each item in WAC 173-901-130(3).

(2) The department will notify the applicant, within thirty days of the receipt of the application:

(a) That the application has been received and is complete; or

(b) That the application is incomplete and identify which sections are missing or incomplete. If the application is incomplete, the applicant must then complete the application and resubmit it.

(3) After receiving a complete application, the department will review the application. The department will, within ninety days of mailing the notice that the completed application has been received, either:

(a) Determine that the applicant **has demonstrated** that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship and grant the exemption;

(b) Determine that the applicant **has been unable to demonstrate** that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship and deny the application for exemption; or

(c) Determine that the applicant **has not provided enough information to demonstrate** that complying with the requirements of this chapter is not feasible, does not allow

compliance with safety standards, or causes significant financial hardship and request additional information.

(4) If the department requests additional information from the applicant the applicant must:

(a) Notify the department that it has received the request for additional information;

(b) Inform the department that it intends to provide the requested additional information; and

(c) Specify a reasonable time frame, not more than one hundred eighty days, within which the applicant will provide the requested information.

(5) After the department has received the additional information the department will review the application and may make any of the determinations listed under subsection (3) of this section.

(6) For the purposes of this section the term "not feasible" means not capable of being done or carried out. The department shall only grant this exemption in instances where the manufacturer has demonstrated that it is impossible or unreasonably impracticable to comply with the requirements of the chapter, as opposed to in instances of minor obstacles and mere difficulty.

(7) **Renewal of exemptions:** If the department grants an application for an exemption, the exemption will be valid for a three-year term. No sooner than ninety days prior to the end of the three-year term, the applicant may provide written notice, that the exemption is still needed. Upon sending this notice the exemption will renew automatically, for an additional three-year term.

(8) **Expiration of exemptions:** If the department has reason to believe that an exemption may no longer be needed, the department may notify the manufacturer that in order to receive the next renewal it will need to update its application and demonstrate that the exemption is still needed. The department must provide this notice at least one year prior to the next renewal date. If the manufacturer fails to update its application or the department, after reviewing the updated application, determines that the exemption is no longer needed, the exemption will expire.

NEW SECTION

WAC 173-901-150 Brake friction material manufactured as part of an original equipment service contract (OESC). (1) Brake friction materials manufactured as part of an original equipment service contract (OESC) are not required to comply with either of the following:

(a) RCW 70.285.030(1) and WAC 173-901-050(1), for brake friction materials designed for use on vehicles manufactured prior to January 1, 2015; or

(b) RCW 70.285.030(2) and WAC 173-901-050(2), for brake friction materials, designed for use on vehicles manufactured prior to January 1, 2021.

(2) Brake friction materials manufactured as part of an OESC are still subject to all other requirements of chapter 70.285 RCW and this chapter including, but not limited to, certification of compliance, marked proof of certification, and reporting requirements.

(3) A vehicle manufacturer must have a system in place to ensure that brake friction material manufactured as part of

an OESC is only installed on the vehicles for which it is designed.

(4) How does a manufacturer of brake friction material manufactured as part of an OESC certify compliance with the requirements of chapter 70.285 RCW and this chapter?

(a) If a brake friction material manufactured as part of an OESC does not contain any of the regulated constituents or copper in amounts exceeding the specified concentrations, the manufacturer of the brake friction material should certify using the normal procedure outlined in WAC 173-901-060.

(b) If the brake friction material contains more than the specified concentrations, the manufacturer of the brake friction material must follow the same procedure outlined in WAC 173-901-060 except that:

(i) For brake friction materials manufactured as part of an OESC for vehicles manufactured prior to January 1, 2015, manufacturers of brake friction material will not be required to submit testing results for the regulated constituents. Manufacturers of brake friction material must still submit testing results to an industry-sponsored registrar and to the department for copper, nickel, zinc, and antimony, to fulfill reporting requirements under RCW 70.285.070 and WAC 173-901-110;

(ii) Brake friction manufacturers must ensure that the unique identification code issued by an industry-sponsored registrar ends in a "WX"; and

(iii) Brake friction manufacturers must include in the self-certification documentation, submitted to the department and an industry-sponsored registrar, a description of the vehicle model and its year of manufacture for which the brake friction material is manufactured.

(5) May brake friction material manufactured as part of an OESC be installed on a vehicle other than the one it is designed for? Brake friction material manufactured as part of an OESC must not be sold or offered for sale for use on a vehicle other than the vehicle model and model year described in the self-certification documentation.

NEW SECTION

WAC 173-901-160 Responsibilities of wholesalers, distributors, installers, and retailers of brake friction materials. (1) May I sell brake friction material that I have in stock before the effective dates of chapter 70.285 RCW? Yes. Brake friction material manufactured before the effective dates may still be sold for a period of time:

(a) Brake friction material that was manufactured before January 1, 2015, may be sold until January 1, 2025, regardless of its content or whether it has been marked with proof of certification; and

(b) Brake friction material that was manufactured before January 1, 2021, and contains more than five percent copper by weight may be sold until January 1, 2031.

(2) How will I know that the brake friction material I sell is compliant? Brake friction material and its packaging are required to be marked with a certification mark and unique identification code indicating that the brake friction material complies with this chapter. Please refer to WAC 173-901-090, 173-901-100, and SAE J866:2012 for details

on the markings. The following table describes which brake friction materials are acceptable for sale and when. Each of the following markings will be the last three digits on the unique code marked on brake friction material:

Brake friction material marked with:	May be sold until:
"N" followed by the last two digits of the year of manufacture.	Brake friction material marked with an "N" meets all of the requirements of this chapter and there are no restrictions on its sale.
"B" followed by the last two digits of the year of manufacture.	Brake friction material marked with a "B" meets all of the requirements of this chapter and there are currently no restrictions on its sale. However, future restriction may be put in place.
"A" followed by the last two digits of the year of manufacture when the year of manufacture is 2012 through 2020.	Brake friction material marked with an "A" that has a manufacture year of 2012 through 2020 may be sold until 2031.
"A" followed by the last two digits of the year of manufacture when the year of manufacture is 2021 or later.	Brake friction materials marked with an "A" that has a manufacture year of 2021 or later, may not be sold or offered for sale in Washington state.
"WX" with or without the year of manufacture.	Brake friction materials marked with an "X" are designed for use on exempted vehicles. It is a violation of this chapter to install these friction materials on nonexempt vehicles.
Brake friction material that is not marked with an environmental compliance marking or the year of manufacture.	Unmarked brake friction material manufactured prior to 2015 may be sold for use on any vehicle until 2025. It is a violation of this chapter to sell unmarked brake friction material that is manufactured after 2015 for use on a vehicle that is required to comply with this chapter.

(3) What will happen if I sell a pad that is in violation of this chapter? For a complete description of the enforcement provisions please see WAC 173-901-180. However, if a wholesaler, distributor, installer, or retailer is found to be violating this chapter, the department must issue a warning letter and provide information and assistance to help this person achieve compliance. If they continue to sell brake fric-

tion material in violation of this chapter after receiving a warning and assistance, the department may issue penalties.

(4) Is it a violation of this chapter to sell a brake friction material that has been marked in accordance with this chapter, yet is found to contain one of the regulated constituents or copper in amounts exceeding the specified concentrations?

(a) A wholesaler, distributor, installer, or retailer that sells or offers for sale brake friction material that has been marked with proof of certification will not be in violation of this chapter, even if the brake friction material contains the regulated constituents or copper in amounts exceeding the specified concentrations.

(b) However, if the wholesaler, distributor, installer, or retailer knew that the brake friction material contained any of the regulated constituents or copper in amounts exceeding the specified concentrations and knew that the brake friction material was labeled incorrectly, yet sold it or offered it for sale in Washington state, they would be in violation of chapter 70.285 RCW and this chapter.

(5) What should I do if I am sold brake friction material that does not comply with the requirements of this chapter? If you are sold brake friction material that is in violation of this chapter, you may not resell it. Report the violation to the department.

(6) If I purchase brake friction material from a brake friction material manufacturer and package it in a new box, what must I do to before offering my product for sale in Washington state? You are responsible for ensuring that the brake friction material is registered with an industry-sponsored registrar before reboxing the product.

(a) If the brake friction material has already been registered, you do not need to reregister or retest the brake friction material and are not responsible for the accuracy of the information submitted to the registrar and the department. You must package the brake friction material in a package that is marked in accordance with WAC 173-901-090.

(b) If the brake friction material has not been registered, you may not offer the product for sale in Washington state unless you register the product with an industry-sponsored registrar and mark the brake friction material and its packaging in accordance with WAC 173-901-090.

NEW SECTION

WAC 173-901-170 Responsibilities of vehicle manufacturers, vehicle dealers, and other people selling motor vehicles. (1) **Vehicle manufacturer responsibilities:** Manufacturers of new motor vehicles offered for sale in Washington state must ensure that motor vehicles are equipped with brake friction material certified to be compliant with the requirements of this chapter.

(2) Do vehicle dealers or other people selling motor vehicles have a responsibility to ensure that the cars they sell are equipped with compliant brake friction material?

(a) Vehicle dealers or other people selling motor vehicles do not have a responsibility to ensure that the cars they sell are equipped with compliant brake friction material.

(b) However, if a vehicle dealer or another person who is selling a motor vehicle replaces the brake friction material of

a new or used vehicle, prior to resale, the seller must replace the brake friction material with a brake friction material that complies with the requirements of this chapter.

NEW SECTION

WAC 173-901-180 Enforcement—Violations—Penalties. (1) The department will enforce this chapter. The department may:

(a) Periodically purchase and test brake friction material sold or offered for sale in Washington state to verify that the material complies with this chapter.

(b) Verify that brake friction material manufacturers have submitted accurate self-certification documentation to the department by requiring brake friction manufacturers to submit complete copies of laboratory testing results and/or samples of brake friction material formulations for which self-certification documentation has been submitted. A brake friction material manufacturer that is required to submit verifying testing results or samples of brake friction material must provide these within seven days of receiving a written notice from the department. The department may not require a manufacturer of brake friction material to verify compliance by submitting samples of brake friction material more than once every three years unless the brake friction material manufacturer has been issued a penalty or required to recall a product under this chapter.

(2) Enforcement of this chapter by the department will rely on notification and information exchange between the department and manufacturers, distributors, retailers, installers, and an industry-sponsored registrar.

(a) After issuing a penalty to or requiring a recall from a manufacturer, the department will notify the industry-sponsored registrar of the violation and inform the registrar if any brake friction materials with a registered unique identification code are not in compliance with the requirements of chapter 70.285 RCW or this chapter.

(b) The department will also post a notice of the penalty or recall on its web site.

(3) The department will issue one warning letter by certified mail to a manufacturer, distributor, installer, or retailer that sells or offers to sell brake friction material in violation of this chapter, and offer information or other appropriate assistance regarding compliance with this chapter. Once a warning letter has been issued to a distributor or retailer for violations under subsections (4) and (5) of this section, the department need not provide warning letters for subsequent violations by that distributor or retailer. For the purposes of subsection (5) of this section, a warning letter serves as notice of the violation. If compliance is not achieved, the department may assess penalties under this section.

(4) A brake friction material distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. Brake friction material distributors or retailers that sell brake friction material that is packaged consistent with RCW 70.285.080 (2)(b) and this chapter are not in violation of this chapter. However, if the department conclusively proves that the brake friction material distributor or retailer was aware that the brake friction material being sold violates RCW 70.285.030 or

70.285.050 or this chapter, the brake friction material distributor or retailer may be subject to civil penalties according to this section.

(5) A brake friction material manufacturer that knowingly violates this chapter shall recall the brake friction material and reimburse the brake friction distributor, installer, retailer, or any other purchaser for the material and any applicable shipping and handling charges for returning the material. A brake friction material manufacturer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation.

(6) A motor vehicle distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. A motor vehicle distributor or retailer is not in violation of this chapter for selling a vehicle that was previously sold at retail and that contains brake friction material failing to meet the requirements of this chapter. However, if the department conclusively proves that the motor vehicle distributor or retailer installed brake friction material that violates RCW 70.285.030, 70.285.050, 70.285.080 (2)(b), or this chapter on the vehicle being sold and was aware that the brake friction material violates RCW 70.285.030, 70.285.050, 70.285.080 (2)(b), or this chapter, the motor vehicle distributor or retailer is subject to civil penalties under this section.

(7) A motor vehicle manufacturer that violates this chapter must notify the registered owner of the vehicle within six months of knowledge of the violation and must replace at no cost to the owner the noncompliant brake friction material with brake friction material that complies with this chapter. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles within six months of knowledge of the violation is subject to a civil penalty not to exceed one hundred thousand dollars. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles after twelve months of knowledge of the violation is subject to a civil penalty not to exceed ten thousand dollars per vehicle. For purposes of this section, "motor vehicle manufacturer" does not include a vehicle dealer defined under RCW 46.70.011 and required to be licensed as a vehicle dealer under chapter 46.70 RCW.

(8) Before the effective date of the prohibitions in RCW 70.285.030 or 70.285.050, the department will prepare and distribute information about the prohibitions to manufacturers, distributors, and retailers to the maximum extent practicable.

(9) All penalties collected under this chapter will be deposited in the state toxics control account created in RCW 70.105D.070.

WSR 12-12-057

WITHDRAWAL OF PROPOSED RULES GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed June 5, 2012, 8:48 a.m.]

WAC 230-15-040, proposed by the gambling commission in WSR 11-23-161 appearing in issue 11-23 of the State Register, which was distributed on December 7, 2011, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-12-058

WITHDRAWAL OF PROPOSED RULES HEALTH CARE AUTHORITY

(By the Code Reviser's Office)

[Filed June 5, 2012, 8:48 a.m.]

WAC 182-500-0070, 182-503-0520, 182-503-0532, 182-503-0555, 182-503-0560, 182-504-0030, 182-504-0040, 182-504-0100, 182-504-0125, 182-506-0020, 182-508-0001, 182-508-0005, 182-508-0010, 182-508-0015, 182-508-0020, 182-508-0030, 182-508-0035, 182-508-0040, 182-508-0050, 182-508-0060, 182-508-0070, 182-508-0080, 182-508-0090, 182-508-0100, 182-508-0110, 182-508-0120, 182-508-0130, 182-508-0150, 182-508-0160, 182-508-0220, 182-508-0230, 182-508-0305, 182-508-0310, 182-508-0315, 182-508-0320, 182-508-0375, 182-509-0005, 182-509-0015, 182-509-0025, 182-509-0030, 182-509-0035, 182-509-0045, 182-509-0055, 182-509-0065, 182-509-0080, 182-509-0085, 182-509-0095, 182-509-0100, 182-509-0110, 182-509-0135, 182-509-0155, 182-509-0165, 182-509-0175, 182-509-0200, 182-509-0205, 182-509-0210, 182-538-063, 182-556-0500, 388-418-0025, 388-505-0110, 388-505-0270, 388-800-0020, 388-800-0025, 388-800-0030, 388-800-0035, 388-800-0048, 388-800-0110, 388-800-0115, 388-800-0130, 388-800-0135, 388-800-0140, 388-800-0145, 388-800-0150, 388-800-0155, 388-800-0160 and 388-800-0165, proposed by the health care authority in WSR 11-23-164 appearing in issue 11-23 of the State Register, which was distributed on December 7, 2011, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-12-063

PROPOSED RULES DEPARTMENT OF ECOLOGY

[Order 11-03—Filed June 5, 2012, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-10-089.

Title of Rule and Other Identifying Information: Chapter 173-165 WAC, Certified water right examiners, the rule will implement RCW 90.03.665 to create the certified water right examiner (CWRE) program.

Hearing Location(s): Ecology Northwest Regional Office, 3190 16th Avenue S.E., Bellevue, WA 98008, on July 16, 2012, at 6:00 p.m.; at the Ecology Headquarters, 300 Desmond Drive, Lacey, WA 98503, on July 17, 2012, at 6:00 p.m.; at the Ecology Central Regional Office, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902, on July 18, 2012, at 6:00 p.m.; and at the Ecology Eastern Regional Office, North 4601 Monroe, Spokane, WA 99205, on July 19, 2012, at 6:00 p.m.

Date of Intended Adoption: September 19, 2012.

Submit Written Comments to: Rebecca Inman, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail Rebecca.Inman@ecy.wa.gov, fax (360) 407-6574, by July 27, 2012.

Assistance for Persons with Disabilities: Contact Judy Beitel at (360) [407-]6878, by July 2, 2012, TTY 771 or 1-877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule will establish the criteria for the CWRE program to implement RCW 90.03.665. RCW 90.03.665 authorizes ecology to certify individuals with specific qualifications as water right examiners to conduct proof examinations on perfected water right permits and change authorizations. The rule will set a fee schedule for CWRE program applicants and CWREs, establish a certification process, describe CWRE responsibilities and the rights and responsibilities of permittees, create a framework for compliance and enforcement, clarify process related to ecology review and decision making related to proof reports of examination[s] submitted by CWREs, and include other requirements to implement the program.

Reasons Supporting Proposal: The rule will create job opportunities in the private sector, expedite the final step for certifying perfected water rights, generate funds to offset the costs of the program, and reduce the workload of water resources program staff. Without the rule, the CWRE program would be unable to function as required in statute and ecology would be unable to establish the fees as authorized in RCW 90.03.665(11) that would help offset some of ecology's costs to implement the program.

Statutory Authority for Adoption: RCW 90.03.665(11), 43.27A.090(11), 43.21A.064(9).

Statute Being Implemented: RCW 90.03.665.

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

Name of Proponent: [Department of ecology], governmental.

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

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

Small Business Economic Impact Statement

Executive Summary: The purpose of chapter 173-165 WAC is to establish procedures for implementing RCW

90.03.665 Certified water right examiners—Fees—Rules. The statute authorizes CWREs to conduct final proof examinations of permitted water uses to support department of ecology (ecology) decisions on whether to issue water right certificates. The statute requires permittees to hire a CWRE to complete a proof examination, when needed. RCW 90.03.665 requires ecology to establish and maintain a list of CWREs through a defined certification process. RCW 90.03.665(11) authorizes ecology to adopt rules appropriate to carry out the purposes of the statute.

Ecology has determined there will be disproportionate impacts to small versus large businesses. Ecology does not believe the proposed fees will cause businesses to lose sales or revenues. Although the fees are not sufficient to meet the costs of conducting business, RCW 90.03.665 has directed ecology to set up a CWREs program.

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

Purpose of this Document: Ecology is proposing chapter 173-165 WAC, Certified water right examiners.

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

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

Background: Ecology is proposing chapter 173-165 WAC, Certified water right examiners. The key elements of the proposed rule for implementing RCW 90.03.665 include:

- Defines processes for:
 - Becoming a CWRE.
 - Meeting continuing education requirements.
 - Renewing certification.
 - Hiring a CWRE.
 - Reviewing proof reports of examination.
 - Enforcing the rule and professional standards.
 - Appealing ecology actions taken under the rule.
- Sets fees for testing, certification, and certification renewal.

Analysis of Compliance Costs for Washington Businesses:

Defining the Regulated Community: In addition to about seven thousand water right applications currently on file, ecology manages a portfolio of about one hundred seventy thousand claims, fifty thousand certificates, three thousand permits, and an estimated four hundred thousand permit-exempt groundwater wells. When ecology issues a new water right permit or a change authorization for an existing water right, it contains a development schedule for putting

the water to beneficial use for the new purpose. When any construction phases are done and the new water use is developed, the water right permit or change authorization holder (permittee) must submit a proof of appropriation to ecology. The next step, in many cases, has been for ecology to do a proof examination to confirm the water use so that a water right certificate could be issued. With the focus on processing applications by the program's limited staff, a backlog developed of permittees waiting for proof examinations.

The 2010 legislature adopted RCW 90.03.665, creating the CWRE program, to ease this backlog without increasing staffing levels or redirecting workloads. It allows experienced and trained professionals to gain certification as a water right examiner to perform proof examinations to support ecology decision making.

Ecology developed chapter 173-165 WAC to implement RCW 90.03.665. It regulates individuals wishing to become CWREs, the CWREs once they are certified, and, to a limited extent, the permittees hiring the CWREs to perform their proof examinations.

Impacts to CWRE Businesses:

CWRE Fees: To calculate what a CWRE who gained certification during the first year of the twenty-year time horizon of this analysis would be expected to pay in fees, if the examiner maintained their certification throughout the twenty-year period, we assumed:

- One \$300 examination fee.
- A 1/5 probability they would take the exam a second time.
- One \$200 initial certification fee.
- Nineteen \$100 annual certification renewal fees after the first year.
- A 1/10 probability they would pay a late fee of average value \$75, per year, after the first year.

Assuming a three percent discount rate, the discounted expected cost in fees to a CWRE over twenty years, assuming they maintained their certification throughout the twenty-year period, is equal to roughly \$2,055.

We also assume administrative costs to the CWRE from:

- Preparing and submitting an application at \$50 in the first year.
- Preparing and submitting the examination fee in the first year at \$10.
- Reading, signing, and returning a copy of the rules of professional performance and submitting the initial certification check at \$10 in the first year.
- \$10 each year, after the first year, to submit proof of continuing education.
- \$10 each year, after the first year, to prepare and submit the certification renewal fee.

Administrative costs total \$450, or discounted to a present value of \$346. The total discounted expected cost from fees and direct administrative costs to one CWRE therefore equals roughly \$2,401 over twenty years, assuming they maintain their certification throughout the twenty-year period.

Reporting and Recordkeeping: CWREs will have to submit proof of eight hours of continuing education annually,

as well as proof reports of examination associated with any proof examinations they perform.

Additional Professional Services: Individual future CWREs, or the firms they work for, may need additional professional services to develop client contracts. Without the rule, they could not become a CWRE or perform proof examinations.

Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: Future water right examiners, or firms they work for, may need some equipment or supplies to complete the proof examinations or to prepare the proof reports of examination. Without the rule, they could not be CWREs, perform proof examinations, or prepare proof reports of examination.

Other Compliance Requirements: We expect individual CWREs, or firms they work for, to have no other compliance requirements from the proposed rule.

Businesses Hiring a Certified Water Examiner:

Reporting and Recordkeeping: The proposed rule amendment adds no additional reporting or record-keeping requirements for small businesses hiring a CWRE to perform a proof examination.

Additional Professional Services: Businesses requiring a proof examination to gain a water right certificate will be required to hire a professional CWRE under RCW 90.03.665, and may wish to have an attorney review any related contract. Without the rule, they would likely wait many years to gain a water right certificate.

Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: We expect no additional equipment, supplies, labor, or administrative costs from the proposed rule for businesses needing to hire a CWRE.

Other Compliance Requirements: We expect no other compliance requirements from the proposed rule for businesses needing to hire a CWRE to perform a proof examination.

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

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

Known Costs: Becoming a CWRE comes with some administrative costs, fees for testing, certification, and renewal. Ecology estimates these costs for a CWRE over twenty years to have a present value of \$2,401. See the cost-benefit analysis for a breakdown of the CWRE fees and costs.

Will Complying With the Proposed Rule Cause Businesses to Lose Sales or Revenue? Ecology does not anticipate any lost sales or revenue under the proposed rule for businesses. CWREs, or the firms they work for, should gain revenue for performing proof examinations.

Will the Proposed Rule Have a Disproportionate Impact on Small Businesses? A disproportionate impact can occur when a small business pays the fees for an employee to become a CWRE. In many cases, ecology assumes the fees for CWREs prescribed under the proposed rule to be small relative to the number of employees or revenue estimated for typical firms in these sectors.

The proposed rule will also affect some industries that need to hire a CWRE to gain a certification for their water right(s). This would come with some minor administrative costs.

Table 2 describes the industries that could be potentially affected by the rule. In order to calculate if disproportionalities exist, ecology has chosen only the environmental consultants industry to examine disproportionalities. There are ten businesses in Washington state listed in industry 541620

(environmental consulting services) as reported to employment security. Ecology will also use cost-per-employee to describe impacts on small businesses versus the top ten percent largest businesses required to comply with the proposed rule.

The estimated cost-per-employee for sole proprietor over twenty years to be a CWRE is \$2,401 and for the top ten percent of business required to comply (environmental consulting services 541620) is \$13.72 per employee.

Table 1. Proportional CWRE Costs

Twenty year costs	CWRE Costs	Average # of Employees		Cost Per Employee	
		Small Business	Ten Percent Largest Business	Small Business	Ten Percent Largest Business
CWRE examiner	\$2,401	1	175	\$2,401	\$13.72

Conclusions: Ecology has determined there will be disproportionate impacts to small versus large businesses. Ecology does not believe the proposed fee increases will cause businesses to lose sales or revenues.

Actions Taken to Reduce the Impact of the Rule on Small Business: Ecology has provided the following cost-minimizing features:

CWRE Applicants:

- Ecology originally planned to charge a fee to review an application to verify whether an applicant met the minimum qualifications to be a CWRE. This fee was also nonrefundable. The intended application fee was folded into the initial certification fee to ensure that those paying the fee got value, rather than paying a fee for a rejected application.
- Ecology considered making all fees nonrefundable, but did not. Therefore, if someone is unable to take the examination after paying the examination fee, ecology can refund the fee.
- If an applicant fails the examination, ecology first intended to require a five-month delay before they can retake the test. This was reduced to thirty days, so that there is less delay in their achieving certification if they can pass the test in their next attempt.

CWREs:

- CWREs must renew their certification annually, and the rule requires ecology to send them notice of the renewal fee and any additional educational hours they require at least sixty days before the certification expires. This is to help them avoid having to pay any late fees or have the certificate expire.
- For the certification renewal, they have a ninety-day grace period to submit their fees (although they must also pay late fees) and proof of continuing education hours. This allows them some flexibility in meeting these requirements, while helping avoid work delays and the expense related to reapplying, retesting, and becoming recertified.
- The compliance and enforcement process provides CWREs an early warning in most cases before problems will result in their certification being suspended or revoked.

- Ecology added a provision for "conditional certification" through a probation agreement for suspended CWREs, to allow them to perform some work duties during their suspension.

Permittees:

- Ecology originally had a provision requiring the permittee to hire the CWRE within one year, or risk having their permit or change authorization cancelled. Ecology removed the time limit and consequence from the proposed rule.

The Involvement of Small Business in the Development of the Proposed Rule: Ecology held two public workshops during the development of the rule, and a draft of the rule was posted on ecology's web site to solicit comments from interested parties. Ecology also developed a list of interested parties to support outreach efforts during the formal rule-making process.

The SIC Codes of Impacted Industries: There are currently nine hundred forty permits potentially subject to this rule amendment. This rule primarily affects those who choose to become CWREs. This may include individuals (sole proprietors) or larger companies like environmental consultants that choose to have a CWRE on staff. Additional industries are included in this examination as permittees as they too can incur some minor administrative costs that not examined in this analysis.

Disproportionate impacts can occur when small businesses (sole proprietors) are compared against larger firms. In many cases, the fees set by the proposed rule would be estimated to be small relative to the revenue estimated for many typical firms in these sectors.

Table 2. Industries Potentially Affected by the Proposed Rule Amendment (North American Industry Classification System²)

Industry Type	NAICS#
Crop production	111
Animal production	112
Forestry and logging	113

Industry Type	NAICS#
Fishing and hunting	114
Mining	212
Residential building construction	2361
Food processing	311
Real estate property managers	53131
Environmental consulting services	541620
Offices of bank holding companies	551111
Waste treatment and disposal	56221
Technical and trade schools	61151
Nature parks and similar institutions	712190
Golf courses and country clubs	713910
Hotels and motels	721110
RV parks and recreational camps	7212
Religious organizations	813110
Environment, conservation, and wildlife organizations	813312
Civic and social organizations	813410
Sawmills	3211
Pulp, paper, and paperboard mills	3221
Petroleum and coal product manufacturing	3241
Basic chemical manufacturing	3251
Glass and glass product manufacturing	3272
Aluminum production	3313
Software reproduction	334611
Aircraft manufacturing	336411

Impacts on Jobs: Ecology does not expect the proposed CWRE program to result in any job losses. Ecology expects some jobs will be created in establishing the CWRE positions.

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

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

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

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

June 5, 2012

Polly Zehm
Deputy Director

Chapter 173-165 WAC

CERTIFIED WATER RIGHT EXAMINERS

NEW SECTION

WAC 173-165-010 Purpose and authority of this chapter. The purpose of this chapter is to establish procedures for implementing RCW 90.03.665, Certified water right examiners—Fees—Rules. The statute authorizes certified water right examiners to conduct final proof examinations of permitted water uses to support department of ecology (ecology) decisions on whether to issue water right certificates. The statute requires permittees, as explained herein, to hire a certified water right examiner to complete a proof examination. RCW 90.03.665 requires ecology to establish and maintain a list of certified water right examiners through a defined certification process. RCW 90.03.665(11) authorizes ecology to adopt rules appropriate to carry out the purposes of the statute.

NEW SECTION

WAC 173-165-020 Definitions. The definitions included in this chapter are intended solely for the implementation of this chapter. This applies to the definitions in this section and those in WAC 173-165-100, Compliance and enforcement.

"Client" means the water right permit or change authorization holder (permittee) that hires the certified water right examiner.

"CWRE" stands for "certified water right examiner" and, when used for clarification in this chapter, denotes elements of the CWRE process and function, such as the CWRE coordinator, certification under this chapter, the list of certified water right examiners, or the proof examinations, reports, and recommendations made by certified water right examiners under this chapter.

"Permitted water use" means a water use under a water right permit or change authorization.

"Permittee" means the person or entity that holds the water right permit or change authorization.

"Program" means ecology's water resources program or its successor.

"Proof report of examination" means the detailed account submitted by the certified water right examiner to ecology to support ecology's decision as to whether to issue a water right certificate.

NEW SECTION

WAC 173-165-030 Certified water right examiner responsibilities. (1) Certified water right examiners must qualify and apply as individuals and maintain their qualification under WAC 173-165-050 and RCW 90.03.665(2) throughout the period of their application and certification.

(a) If a person qualifies as a certified water right examiner through a hydrogeology, professional engineering, or land surveyor license in the state of Washington, he/she must maintain that licensure to remain qualified as a certified

water right examiner unless they satisfy one of the other criteria in RCW 90.03.665(2).

(b) Certified water right examiners must notify ecology within two business days if:

(i) Notified their license as a professional engineer, land surveyor, or registered hydrogeologist is suspended or revoked; or

(ii) No longer a qualified water conservancy board commissioner.

(2) The certified water right examiner must follow the rules of professional performance. The applicant must review the rules of professional performance as provided by ecology and acknowledge by returning a copy with his or her signature.

(3) Certified water right examiners must maintain the validity of their CWRE certification throughout the period that they accept clients, perform proof examinations, and submit proof reports of examination, or ecology may revoke their certification. Maintaining a valid certification includes, but may not be limited to:

(a) Maintaining CWRE qualification under RCW 90.03.665 and WAC 173-165-050.

(b) Completing and showing proof of eight hours of approved continuing education annually, as defined in WAC 173-165-090. (c) Paying CWRE certification renewal fees in a timely manner, as defined in WAC 173-165-080(4).

(d) Complying with the conditions of any suspension order or probation agreement.

(4) A CWRE certification applies only to an individual, and not to any associate, business, organization, or other entity. The certified water right examiner must perform all aspects of the proof examinations and reporting, including field visits, technical evaluation, and preparing the proof reports of examination.

(a) If an entity employs a certified water right examiner, other employees of the same entity cannot perform the duties under RCW 90.03.665 or this chapter using the certified water right examiner's certification.

(b) Two or more certified water right examiners, regardless of whether they share a common employer, may perform work related to the same permit or change authorization only with the written permission of the client.

(5) Upon review of client water rights, certified water right examiners are responsible for submitting proof reports of examination to the appropriate ecology regional office for ecology's review and decision making. The proof report of examination must be complete and legible, and:

(a) In the form authorized by ecology. Ecology will not accept changes to the authorized forms.

(b) Compliant with permit or change authorization conditions, state water law, and regulations.

(c) Adequately supported by data, calculations, computations, and photographs.

(6) Certified water right examiners are responsible for the billing of clients and collection of fees. The state of Washington shall not be liable for a person's compensation as a certified water right examiner. The client shall pay any charges directly to the certified water right examiner, or his/her employer or chosen representative.

NEW SECTION

WAC 173-165-040 Fees. As authorized under RCW 90.03.665, ecology may establish and collect fees for the examination, certification, and renewal of certification for certified water right examiners. Table 1 summarizes ecology's fee structure related to CWRE examination and certification under this chapter.

Table 1

Type of fee	Amount	Due
Application	No fee to apply	Applicants should NOT include any fee when submitting their application
Examination	\$300	At least two weeks prior to the testing date
Certification fee	\$200	Prior to receiving certification
Certification renewal fee	\$100	Annually, prior to expiration of the current certification
Additional late fee for renewal up to 30 days after expiration	\$50	Within 30 days following expiration of the certification
Additional late fee for renewal 31 to 90 days after expiration	\$100	Within 90 days of expiration

NEW SECTION

WAC 173-165-050 Minimum qualifications for CWRE certification. (1) To be a certified water right examiner, you must meet at least one of the following qualifications:

(a) Licensed in Washington state as a:

(i) Professional engineer;

(ii) Professional land surveyor; or

(iii) Hydrogeologist.

(b) An eligible water conservancy board commissioner, which does not include alternates, current with all training requirements as required in RCW 90.80.040 and chapter 173-153 WAC; or

(c) Holding five years applicable experience as defined in subsection (2) of this section, including at least three years of experience defined in subsection (3) of this section.

(2) The five years of applicable work experience includes direct individual and practical experience related to one or more of the following:

(a) Conducting water right proof examinations in Washington or another state, or performing comparable work in evaluating the beneficial use of water.

(b) Preparing water right documents for use in the adjudication of water rights.

(c) Working in private industry evaluating water right applications and preparing reports of examination for cost recovery or cost reimbursement contracts.

(d) Evaluating state water right applications, conducting field investigations for water right permits, and preparing reports of examination.

(e) Preparing or reviewing records of decision for county conservancy boards.

(3) The five years of work experience must include at least three years of any one of the following:

(a) Evaluating new water right applications or applications for change or transfer for compliance with applicable rules and statutes.

(b) Conducting field investigations and preparing tentative determinations of water rights related to water use.

(c) Verifying beneficial use of water.

(d) Regulating water rights as a stream patrolman or watermaster (RCW 90.03.070) or watermaster assigned to regulate water use within federal reclamation projects.

(e) Conducting proof examinations for issuance of certificates of water rights.

(f) Other qualifying experience, substituted year for year, as determined by ecology.

(4) Qualified applicants must maintain at least one of their qualifications throughout the duration of the application and certification periods. (See WAC 173-165-030.)

NEW SECTION

WAC 173-165-060 Application process. Submitting a completed application is the first step of the CWRE examination.

(1) Applicants should verify that they meet minimum qualification requirements under RCW 90.03.665(2) and WAC 173-165-050 prior to applying.

(2) Applicants must complete and submit to ecology an application for certified water rights examiner in an ecology-approved application form. Ecology will not accept changes to the application form.

(3) Ecology will not consider an application complete until receipt of:

(a) A completed application form without omissions, signed by the applicant.

(b) Any other documentation requested by ecology.

(4) Ecology will review each application based on RCW 90.03.665(2) and WAC 173-165-050.

(5) Ecology will notify applicants in writing whether their application is approved.

(a) If their application is approved, ecology will provide the applicant information on testing opportunities and submitting the required examination fee.

(b) If the applicant does not appear to meet the minimum qualifications or the application is not complete, ecology will return the application.

(c) If an applicant had a CWRE certification previously revoked under WAC 173-165-100, ecology may reject their application without regard to whether the applicant otherwise

meets the minimum qualifications. In such cases, ecology may consider the following before approving the application:

(i) Whether five years has elapsed since the CWRE certificate was revoked.

(ii) The status of the applicant's qualifications including any professional licensure or water conservancy board membership.

(iii) The status of the incident(s) that originally required revocation of the CWRE certification.

(6) Application materials are considered public records and are subject to the Public Records Act, chapter 42.56 RCW.

NEW SECTION

WAC 173-165-070 Examination process. (1) Applicants must:

(a) Qualify for testing through the application process defined in WAC 173-165-060.

(b) Submit the three hundred dollar examination fee at least two weeks prior to the testing date.

(2) For applicants with a disability, ecology will provide accommodations consistent with the Americans with Disabilities Act. Applicants should make their request for accommodations as early as possible to provide reasonable notice.

(3) Ecology will notify applicants by mail of their examination result as either pass or fail.

(4) If an applicant fails the examination, he/she may:

(a) Repeat the examination no sooner than thirty days after testing.

(b) Apply to retake the examination by submitting a written request and the three hundred dollar examination fee to ecology.

(5) Review of past examinations is not permitted.

NEW SECTION

WAC 173-165-080 Certification. (1) Ecology will issue the CWRE certificate and add the certified water right examiner's name to the CWRE list on ecology's web site within thirty days upon completion of the following:

(a) The applicant shows proof of qualifications through the application process;

(b) The applicant passes the CWRE examination;

(c) The applicant submits a signed copy of the rules of professional performance, as prescribed by ecology; and

(d) Ecology receives the two hundred dollar certification fee.

(2) The CWRE certificate allows the holder to conduct proof examinations in accordance with RCW 90.03.665 and submit proof reports of examination to support ecology decisions on whether to issue water right certificates.

(3) The CWRE certificate does not constitute professional licensure for any related field including hydrogeology, engineering, or land surveying.

(4) **Certification renewal.**

(a) CWRE certifications expire annually.

(b) Ecology will issue a renewal reminder letter to the certified water right examiner at the address of record, at least sixty days prior to the expiration of the current certification. The letter will provide the following information:

- (i) The status of his/her continuing education credits.
- (ii) Whether the certification is in good standing under RCW 90.03.665 and this chapter.
- (iii) Whether proof of qualifications is required.
- (iv) Directions for submitting the certification renewal fee and other required documentation.
- (c) To renew certification, the certified water right examiner must submit to ecology, as directed in the renewal reminder letter and postmarked no later than the expiration date:
 - (i) A one hundred dollar renewal fee;
 - (ii) Proof of any remaining continuing education credits due;
 - (iii) Proof of qualifications, if required; and
 - (iv) A certification renewal form or a letter requesting renewal of the CWRE certification.
- (d) If a certified water right examiner does not renew his/her certificate by the expiration date, the certification expires and becomes invalid.

- (i) The list of certified water right examiners on ecology's web site will indicate that the certification has expired.
- (ii) There is a maximum ninety-day grace period after the expiration date for the certified water right examiner to renew the certification. Associated late fees will apply during the grace period as required under (e) of this subsection.
- (iii) Late renewal during the ninety-day grace period will not delay the date the new certification will expire, or change the anniversary date regarding annual continuing education requirements.

(e) If the certified water right examiner fails to renew his/her certification by the expiration date as required under (c) of this subsection, the following late fees will apply:

- (i) Renewal between one to thirty days after expiration of the certificate includes a late fee of fifty dollars, in addition to the one hundred dollar renewal fee.
- (ii) Renewal between thirty-one to ninety days after expiration of the certificate includes a late fee of one hundred dollars, in addition to the one hundred dollar renewal fee.
- (f) If a certified water right examiner fails to renew their certification before the end of the ninety-day grace period:
 - (i) Ecology will remove their name from the list of certified water right examiners.
 - (ii) They must notify all current clients in writing of their ineligibility, and submit a copy of the letter to ecology.
 - (iii) They must successfully reapply, retest, and pay all related fees to become recertified.

NEW SECTION

WAC 173-165-090 Continuing education. (1) Each certified water right examiner must complete eight hours annually of continuing education in the water resources field.

(2) Ecology will provide information on continuing education opportunities for certified water right examiners on the internet. Ecology may grant credit for completing related training not listed on our web site at the discretion of the CWRE coordinator.

(3) Certified water right examiners may submit proof of their continuing education credits to the CWRE coordinator at any time.

(4) Ecology will notify certified water right examiners of their qualifying education status in their certification renewal letter.

(5) Ecology will not renew the CWRE certification until receipt of evidence that the certified water right examiner has completed the required continuing education hours.

(6) Ecology will apply continuing education hours earned in the following order:

- (a) Overdue hours needed to renew certification during the ninety-day grace period.
- (b) Hours needed for the next certification renewal.
- (7) Certified water right examiners may not carry over continuing education hours for future credit in excess of the annually required eight hours.

NEW SECTION

WAC 173-165-100 Compliance and enforcement. (1) Ecology is authorized to take all actions under this rule to examine, certify, investigate, and enforce this rule against certified water right examiners and CWRE applicants. However:

- (a) Certified water right examiners are independent contractors and not ecology employees.
- (b) Ecology is not responsible for the direct supervision of a certified water right examiner.
- (c) Ecology is not responsible for the contractual relationship between certified water right examiners and their clients.

(2) Nothing in this chapter is intended to prevent ecology from taking immediate action if it is critical to the safety of the public, agency staff, and others; or is critical to the protection of the water resource as otherwise authorized by law.

(3) **Informal actions.** Ecology will pursue compliance with RCW 90.03.665(4) with the following informal methods, which are not appealable:

(a) Ecology staff will spot-check the work of certified water right examiners to ensure the public is competently served.

(b) Staff may provide technical assistance or training.

(c) Ecology may issue verbal or written warnings, such as to advice on poor performance, give notice of one or more customer complaints, or to request actions to prevent violations before they occur (RCW 90.03.605 (1)(b)).

(4) **Formal actions.** Ecology will formally pursue compliance with RCW 90.03.665(4) by issuing an administrative order to suspend or revoke a CWRE certification. An order is a formal requirement to correct or prevent a documented violation and is an appealable action. Orders are issued by certified mail to the certified water right examiner's address on record or delivered in person.

(a) **"Suspension," "suspend," or "suspending"** means temporary postponement or limitation of a certified water right examiner's certification authorities.

(i) Suspension is for a temporary period not to exceed one year.

(ii) Suspension is intended for the certified water right examiner to improve poor performance, resolve client complaints, or to acquire additional training, or ecology may sus-

pend a certified water right examiner as a temporary measure during a compliance investigation.

(iii) Certified water right examiners may renew their CWRE certification during the period of suspension, if they are in compliance with the suspension order and the conditions of any probation agreement, and meet the conditions of renewal under WAC 173-165-080(4).

(b) **"Revocation," "revoke," or "revoking"** means a CWRE certification is completely invalidated with sanctions.

(i) A revoked CWRE certification cannot be renewed.

(ii) When a CWRE certification is revoked, to become recertified, the person:

(A) Must wait at least five years before ecology can accept their reapplication.

(B) Must reapply, retest, and be recertified, as well as pay all associated fees.

(iii) Even after the five years has passed, ecology may choose to reject the reapplication regardless of whether the applicant otherwise meets minimum qualifications (WAC 173-165-060 (5)(c)).

(5) RCW 90.03.665(4) authorizes ecology to suspend or revoke the certification of a certified water right examiner based on failure to acquire continuing education credits, poor performance, excessive complaints from their clients, or malfeasance. For the purposes of this chapter:

(a) **"Poor performance"** means work products or work behaviors that fail to meet accepted standards of professional behavior and performance, such as:

(i) Repeated submittal of incomplete, inaccurate, insufficiently detailed, or otherwise unacceptable proof reports of examination.

(ii) Extensive delays in submitting proof reports of examination after completion of the proof examination.

(iii) Failure to abide by the rules of professional performance or to meet statutory requirements.

(b) **"Excessive complaints"** means complaints that go beyond what is proper, normal, or reasonable. If ecology receives two or more complaints for an individual certified water right examiner in any twelve-month period, ecology may consider the number and nature of the complaints, and the frequency in relation to the number of proof examinations completed by the certified water right examiner in determining whether complaints are excessive.

(c) **"Malfeasance"** means wrongdoing or misconduct, such as an act that gives rise to civil liability for damages arising out of professional conduct; or that is harmful, or contrary to law; or that is a violation of professional standards or ethical rules; or an act in violation of a public trust.

(d) **"Compliance investigation"** means an informal or formal investigation by ecology or the CWRE investigative committee of a certified water right examiner to ensure that the public is being competently served, or in response to client complaints, indications of poor performance, or when ecology suspects malfeasance. Compliance investigations may include:

(i) Spot checking the work of the certified water right examiner.

(ii) Interviewing past and current clients.

(iii) Reviewing previous proof reports of examination.

(iv) Documenting patterns of behavior.

(v) Holding a meeting with the certified water right examiner to discuss concerns and possible options for dealing with the problem.

(vi) Other actions ecology or the CWRE investigative committee deems appropriate.

(e) **"CWRE investigative committee"** means a group that may be formed to investigate or to review corrective action proposals if ecology suspects malfeasance, receives excessive complaints from clients, or finds a pattern of poor performance. The committee may be convened on an as-needed basis at any time and may include:

(i) The CWRE coordinator.

(ii) Regional water right permitting staff.

(iii) Other program staff or managers.

(iv) Other ecology staff or managers.

(v) Assistant attorney(s) general.

(vi) Others with expertise appropriate to the process.

(6) Client complaints, issues of poor performance, and any indications of malfeasance should be referred to the CWRE coordinator. The CWRE coordinator may work with regional permitting staff and program management to determine whether further action is appropriate, such as:

(a) Meet with the certified water right examiner to discuss concerns and possible options for dealing with the problem.

(b) Provide technical assistance.

(c) Issue a verbal or written warning.

(d) Perform a preliminary (informal) or formal compliance investigation.

(e) Convene the CWRE investigative committee.

(f) Consult with an assistant attorney general.

(g) Present issues to agency senior management.

(h) File a police report.

(i) Other steps as appropriate for the complaint.

(7) When ecology or the CWRE investigative committee does a formal compliance investigation of a certified water right examiner, the certified water right examiner will be notified in writing as to the results of the investigation.

(8) When investigating a potential act of malfeasance, ecology may suspend the CWRE certificate until the final investigation is complete.

(9) Ecology may immediately revoke the certification of a certified water right examiner found liable or convicted for malfeasance in a court of law.

(10) Ecology will determine whether to suspend or revoke a CWRE certification.

(a) The CWRE coordinator or designee will discuss the recommendation, including the results of any investigation made, with program management.

(b) Ecology is ultimately responsible for the content of the order to suspend or revoke a CWRE certification.

(c) The suspension or revocation is effective as of the date of formal notification to the certified water right examiner.

(11) After suspending a CWRE certification, ecology may enter into a probation agreement that would allow the certified water right examiner to continue to perform some or all CWRE services during the period of suspension.

(a) A probation agreement will be the equivalent of a conditional certification.

(b) The probation agreement will identify the following:

(i) Requirements for the certified water right examiner to fulfill the agreement, such as additional continuing education of a specific subject.

(ii) The length of time for the suspension before ecology will revoke the CWRE certification for failure to meet the agreement.

(iii) Any requirements for retesting.

(iv) Any other elements specific to the case.

(c) Any probation agreement will be signed by the certified water right examiner and ecology program manager or designee.

(12) The certified water right examiner under suspension must abide by the terms of the suspension order and any probation agreement, and satisfy all remedial requirements, in addition to any statutory requirements, or ecology may revoke the certification as described in subsection (6) of this section.

(13) The certified water right examiner under suspension must continue to maintain certification according to the renewal deadlines identified in WAC 173-165-080(4), or ecology may revoke the certification as described in subsection (4)(b) of this section.

NEW SECTION

WAC 173-165-110 Appeals. All final written decisions of the department of ecology pertaining to certified water right examiners and CWRE applicants under this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 173-165-120 Permittee rights and responsibilities. (1) A permittee may develop all or a portion of the project and put water to beneficial use in compliance with their water right permit or change authorization. Development of the project and the measure of the beneficial use may be less than authorized, but may not exceed the authorized quantity or conditions of use.

(2) Once the project development ends and beneficial use of the water is established under the water right permit or change authorization, the permittee shall submit a notarized proof of appropriation form to the appropriate ecology regional office.

(3) Ecology will review the proof of appropriation form and respond in writing directing the permittee to hire a certified water right examiner. Ecology may waive the requirement to secure the services of a certified water right examiner if ecology has conducted the proof examination or determines that one is not necessary to issue a certificate of water right.

(4) As directed by ecology, the permittee must secure the services of a certified water right examiner from the ecology-maintained CWRE list on ecology's web site to perform the proof examination and submit a proof report of examination to ecology.

(5) Ecology will send the permittee a copy, if during the first thirty days from receipt of the documents ecology

returns the proof report of examination to the certified water right examiner for correction.

(6) Until ecology has made a final decision (WAC 173-165-130), the permittee may withdraw the proof report of examination submitted by the certified water right examiner at any time during ecology's review period.

(a) To withdraw the CWRE proof report of examination, the permittee must submit to ecology the request to withdraw in writing, including the effective date and future intent of water use.

(b) Upon written withdrawal by the permittee, ecology will cease review of the proof report of examination.

(7) Within thirty days of withdrawing the proof report or examination, the permittee must:

(a) Schedule a technical assistance meeting with the regional water resources program; and

(b) Define a course of action for moving the water right permit from proof of appropriation stage to certification under RCW 90.03.330.

(8) Should the permittee not comply with this section, ecology may:

(a) Cancel all or a portion of the water right permit or change authorization; or

(b) Issue a final determination through an administrative order based on the information submitted, per WAC 173-165-130(4).

NEW SECTION

WAC 173-165-130 Ecology review and final decision making. (1) Ecology will not accept proof reports of examination from a certified water right examiner whose certificate is expired, revoked, or otherwise invalid. Ecology has a maximum of sixty days to make the final decision on the CWRE proof report of examination unless otherwise requested in writing by the permittee as allowed under RCW 90.03.665 (6).

(2) Ecology may return the proof report of examination for correction to the certified water right examiner and the permittee within thirty days of ecology's initial receipt of the documents.

(a) Ecology's initial review will be comprehensive to identify all deficiencies.

(b) Ecology shall document on the proof report or examination the date ecology returned the report to the certified water right examiner for revision.

(c) If a proof report of examination is returned to the certified water right examiner and permittee for correction, ecology's sixty-day clock stops.

(d) The certified water right examiner should return the corrected report within ninety days for ecology to complete its review. On receipt of the corrected report from the certified water right examiner, ecology has thirty days to issue a final decision regarding certification of the water right.

(e) If the certified water right examiner returns the corrected report later than ninety days, ecology will determine it to be a new report and ecology's sixty-day review period begins again.

(3) If during the sixty-day review period, the permittee submits a request to withdraw the proof report of examina-

tion, so long as ecology has not yet made a final decision on certification of the water right, ecology will cease their review. Ecology may consider the withdrawal as evidence of intended permit cancellation if a permittee fails to:

(a) Schedule a technical assistance meeting with regional program staff; and

(b) Define a course of action for moving the water right permit from proof of appropriation stage to certification under RCW 90.03.330, as required under WAC 173-165-120 (6).

(4) Within sixty days, ecology will make a final determination regarding the proof report of examination by:

(a) Issuing a recommendation to certify the beneficial use of water in a final administrative order.

(i) After the thirty-day appeal period, ecology will prepare the water right certificate based on their review of the CWRE proof report of examination and any other information within the record, and request certificate and recording fees from the permittee.

(ii) Ecology will issue the water right certification upon receipt of certificate and recording fees.

(b) Defining a course of action for moving the water right permit or change authorization to certification under RCW 90.03.330.

(c) Canceling the permit by issuing an administrative order that identifies the reasons for permit cancellation.

(d) Taking other actions deemed appropriate based on the CWRE proof report of examination and findings.

(5) If ecology's final decision on the proof report of examination is in conflict with the certified water right examiner's recommendation, ecology will identify in its administrative order the reasons for modifying or reversing the CWRE recommendation.

WSR 12-12-066
PROPOSED RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-10—Filed June 5, 2012, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-09-083.

Title of Rule and Other Identifying Information: Postponing the transition date for title insurers to file their rates with the commissioner and delaying the filing of title agent financial data with their title insurers for the calendar year 2011.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on July 12, 2012, at 10:00 a.m.

Date of Intended Adoption: July 13, 2012.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail jimt@oic.wa.gov, fax (360) 586-3109, by July 11, 2012.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by July 11, 2012, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will amend WAC 284-29A-030 to postpone by one year the date: Upon which title insurers must file their rates with the commissioner under RCW 48.29.147 and when rate filings must be made under RCW 48.29.147 rather than RCW 48.29.140. Also, the proposed rule postpones the filing of the title agent report under WAC 284-29A-030 for the calendar year 2011 to April 1, 2013, rather than April 1, 2012.

Reasons Supporting Proposal: Following the adoption of WAC 284-29A-110, the National Association of Insurance Commissioners (NAIC) task force on title insurance statistical reporting, after working with the title insurance industry, adopted a guideline for title insurance agents to report financial data to insurance commissioners. The commissioner is considering amending the current rules, which require title insurance agents to submit data to the insurance company(s), to adopt the NAIC guideline. In an effort to avoid unnecessary administrative filings under the current rules, the proposed rule postpones the current requirement for title insurance agents to submit the data to the title insurance company(s) and postpones the change to the prior approval system in order to implement the NAIC guideline.

Statutory Authority for Adoption: RCW 48.02.060 and 48.29.140.

Statute Being Implemented: RCW 48.29.143 and 48.29.147.

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: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Because this rule simply postpones for one year the transition date to the new rate approval system, it does not require title insurers or title agents to incur new costs. Also, since this rule simply postpones the filing of the title agent data report to its insurers for the calendar year 2011 from April 1, 2012, to April 1, 2013, it does not require title insurers or title agents to incur new costs. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

June 5, 2012

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2011-07, filed 7/27/11, effective 8/27/11)

WAC 284-29A-030 Transition to prior approval system. (1) On and after January 1, (~~(2013)~~) 2014, all rates used

in Washington state must be filed and approved under RCW 48.29.147.

(2) Title insurers must submit the rate filings required under RCW 48.29.147 and subsection (1) of this section to the commissioner by September 1, (~~2012~~) 2013, for rates to be effective on January 1, (~~2013~~) 2014. This rule allows the commissioner time to take final action on rates filed under this chapter before the effective date of January 1, (~~2013~~) 2014.

(3) Rates filed under RCW 48.29.140(2) must not be used for commitments issued on or after January 1, (~~2013~~) 2014.

AMENDATORY SECTION (Amending Matter No. R 2009-01, filed 7/20/10, effective 8/20/10)

WAC 284-29A-110 Title insurance agents must report data to title insurers. (1) Each title insurance agent must report premium, policy count, and expense data annually to each title insurer for which it produces business in the state of Washington by April 1st of each year, except as provided in subsection (4) of this section. These data must be reported following the instructions published by the commissioner on the commissioner's web site at www.insurance.wa.gov. These instructions, called the *Title Insurance Agent Annual Report*, are incorporated into this chapter by reference.

(2) Each annual report required by this section must include:

(a) The following premium and policy count data:

(i) Title insurance premiums for all of the agent's business; and

(ii) Title insurance premiums produced for the title insurer to which the report is sent.

(iii) Number of policies issued by all of the title insurers with which the agent does business; and

(iv) Number of policies issued by the title insurer to which the report is sent.

(b) The following expense data related to issuing title insurance policies and commitments for all of the agent's business, excluding all expenses related to escrow and other activities not directly related to title insurance:

(i) Employees' salaries and wages;

(ii) Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners;

(iii) Employee benefits;

(iv) Rent;

(v) Insurance;

(vi) Legal expense;

(vii) Licenses, taxes, and fees;

(viii) Title plant expense and maintenance;

(ix) Office supplies;

(x) Depreciation;

(xi) Automobile expense;

(xii) Communication expense;

(xiii) Education expense;

(xiv) Bad debts;

(xv) Interest expense;

(xvi) Employee travel and lodging;

(xvii) Loss and loss adjustment expense;

(xviii) Accounting and auditing expense;

(xix) Public relations expense; and

(xx) Other specifically identified expenses.

(c) An explanation that:

(i) Describes how expenses are allocated between the title operations and escrow or other operations of the title insurance agent; and

(ii) Demonstrates that the expenses described in WAC 284-29A-070(2) have been excluded.

(d) The estimated average cost to issue a title insurance commitment.

(3) If a title insurer does not receive a report required under this section by April 1st of each year, the title insurer must notify the commissioner by April 15th. This notice must include the name of the agent that did not send the report on time.

(4) For the 2011 calendar year report, each title agent must submit the report to the title insurer(s) on or before April 1, 2013.

WSR 12-12-068

PROPOSED RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed June 5, 2012, 2:43 p.m.]

Supplemental Notice to WSR 11-23-164.

Preproposal statement of inquiry was filed as WSR 11-16-104.

Title of Rule and Other Identifying Information: Incapacity-based medical care services program (new); repealing WAC 388-505-0110, 388-556-0500, 388-800-0020, 388-800-0025, 388-800-0030, 388-800-0035, 388-800-0048, 388-800-0110, 388-800-0115, 388-800-0130, 388-800-0135, 388-800-0140, 388-800-0145, 388-800-0150, 388-800-0155, 388-800-0160 and 388-800-0165; amending WAC 182-500-0070, 182-538-063 and 388-505-0270; and creating WAC 182-503-0520, 182-503-0532, 182-503-0555, 182-503-0560, 182-504-0030, 182-504-0040, 182-504-0100, 182-504-0125, 182-506-0020, 182-508-0001, 182-508-0005, 182-508-0010, 182-508-0015, 182-508-0020, 182-508-0030, 182-508-0035, 182-508-0040, 182-508-0050, 182-508-0060, 182-508-0070, 182-508-0080, 182-508-0090, 182-508-0100, 182-508-0110, 182-508-0120, 182-508-0130, 182-508-0150, 182-508-0160, 182-508-0220, 182-508-0230, 182-508-0305, 182-508-0310, 182-508-0315, 182-508-0320, 182-508-0375, 182-509-0005, 182-509-0015, 182-509-0025, 182-509-0030, 182-509-0035, 182-509-0045, 182-509-0055, 182-509-0065, 182-509-0080, 182-509-0085, 182-509-0095, 182-509-0100, 182-509-0110, 182-509-0135, 182-509-0155, 182-509-0165, 182-509-0175, 182-509-0200, 182-509-0205, and 182-509-0210.

Hearing Location(s): Office Building 2, Auditorium, 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 directions

can be obtained by calling (360) 664-6094, on July 10, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 11, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on July 10, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 2, 2012, TTY/TDD (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In meeting the requirements of E2SHB [ESHB] 2082, the agency is amending, repealing, and creating new rules to: (1) Eliminate references to General assistance—Unemployable and disability lifeline cash programs; and (2) establish the incapacity-based medical care services program.

Reasons Supporting Proposal: The agency is holding a second public hearing to allow interested stakeholders the opportunity to review the revised proposed rules as a result of the comments received from the first public hearing held on December 27, 2011.

Statutory Authority for Adoption: RCW 41.05.021, 74.09.035.

Statute Being Implemented: Chapter 36, Laws of 2011 (ESSHB [ESHB] 2082).

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

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation and Enforcement: Dody McAlpine, P.O. Box 45504, Olympia, WA 98504-5534, (360) 725-9964.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to health care authority rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

June 5, 2012

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0070 Medical assistance definitions—
M. "Medicaid" is the federal aid Title XIX program of the Social Security Act under which medical care is provided to eligible persons.

"Medical assistance" for the purposes of chapters 388-500 through 388-561 WAC, means the various healthcare programs administered by the agency or the agency's desig-

nee that provide federally funded and/or state-funded health-care benefits to eligible clients.

"Medical assistance administration (MAA)" is the former organization within the department of social and health services authorized to administer the federally funded and/or state-funded healthcare programs that are now administered by the agency, formerly the medicaid purchasing administration (MPA), of the health and recovery services administration (HRSA).

"Medical care services (MCS)" means the limited scope of care medical program financed by state funds (~~and provided to disability lifeline and alcohol and drug addiction services clients~~) for clients who meet the incapacity criteria defined in chapter 182-508 WAC or who are eligible for the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program.

"Medical consultant" means a physician employed or contracted by the agency or the agency's designee.

"Medical facility" means a medical institution or clinic that provides healthcare services.

"Medical institution" See "institution" in WAC 388-500-0050.

"Medically necessary" is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purposes of this section, "course of treatment" may include mere observation or, where appropriate, no medical treatment at all.

"Medically needy (MN) or medically needy program (MNP)" is the state- and federally funded healthcare program available to specific groups of persons who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income and/or resources above the CN standard may also qualify for MN.

"Medicare" is the federal government health insurance program for certain aged or disabled persons under Titles II and XVIII of the Social Security Act. Medicare has four parts:

(1) **"Part A"** - Covers medicare inpatient hospital services, post-hospital skilled nursing facility care, home health services, and hospice care.

(2) **"Part B"** - The supplementary medical insurance benefit (SMIB) that covers medicare doctors' services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of medicare.

(3) **"Part C"** - Covers medicare benefits for clients enrolled in a medicare advantage plan.

(4) **"Part D"** - The medicare prescription drug insurance benefit.

"Medicare assignment" means the process by which a provider agrees to provide services to a medicare beneficiary and accept medicare's payment for the services.

"**Medicare cost-sharing**" means out-of-pocket medical expenses related to services provided by medicare. For medical assistance clients who are enrolled in medicare, cost-sharing may include Part A and Part B premiums, co-insurance, deductibles, and copayments for medicare services. See chapter 388-517 WAC for more information.

Chapter 182-503 WAC

PERSONS ELIGIBLE FOR MEDICAL ASSISTANCE

NEW SECTION

WAC 182-503-0520 Residency requirements for medical care services (MCS). This section applies to medical care services (MCS).

- (1) A resident is an individual who:
 - (a) Currently lives in Washington and intends to continue living here permanently or for an indefinite period of time; or
 - (b) Entered the state looking for a job; or
 - (c) Entered the state with a job commitment.
- (2) An individual does not need to live in the state for a specific period of time to be considered a resident.
- (3) An individual receiving MCS can temporarily be out of the state for more than one month. If so, the individual must provide the agency or the agency's designee with adequate information to demonstrate the intent to continue to reside in the state of Washington.
- (4) An individual may not receive comparable benefits from another state for the MCS program.
- (5) A former resident of the state can apply for MCS while living in another state if:
 - (a) The individual:
 - (i) Plans to return to this state;
 - (ii) Intends to maintain a residence in this state; and
 - (iii) Lives in the United States at the time of the application.
 - (b) In addition to the conditions in (a)(i), (ii), and (iii) of this subsection being met, the absence must be:
 - (i) Enforced and beyond the individual's control; or
 - (ii) Essential to the individual's welfare and is due to physical or social needs.
 - (c) See WAC 388-406-0035, 388-406-0040, and 388-406-0045 for time limits on processing applications.
- (6) Residency is not a requirement for detoxification services.
- (7) An individual is not a resident when the individual enters Washington state only for medical care. This individual is not eligible for any medical program. The only exception is described in subsection (8) of this section.
- (8) It is not necessary for an individual moving from another state directly to a nursing facility in Washington state to establish residency before entering the facility. The individual is considered a resident if they intend to remain permanently or for an indefinite period unless placed in the nursing facility by another state.
- (9) An individual's residence is the state:
 - (a) Where the parent or legal guardian resides, if appointed, for an institutionalized individual twenty-one

years of age or older, who became incapable of determining residential intent before reaching age twenty-one;

(b) Where an individual is residing if the individual becomes incapable of determining residential intent after reaching twenty-one years of age;

(c) Making a placement in an out-of-state institution; or

(d) For any other institutionalized individual, the state of residence is the state where the individual is living with the intent to remain there permanently or for an indefinite period.

(10) In a dispute between states as to which is an individual's state of residence, the state of residence is the state in which the individual is physically located.

NEW SECTION

WAC 182-503-0532 Citizenship requirements for the medical care services (MCS) and ADATSA programs. (1)

To receive medical care services (MCS) benefits, an individual must be ineligible for the temporary assistance for needy families (TANF) or the Supplemental Security Income (SSI) program for a reason other than failure to cooperate with program requirements, and belong to one of the following groups as defined in WAC 388-424-0001:

- (a) A U.S. citizen;
 - (b) A U.S. national;
 - (c) An American Indian born outside the U.S.;
 - (d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking; or
 - (e) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 182-503-0520.
- (2) To receive ADATSA benefits, an individual must belong to one of the following groups as defined in WAC 388-424-0001:
- (a) A U.S. citizen;
 - (b) A U.S. national;
 - (c) An American Indian born outside the U.S.;
 - (d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking; or
 - (e) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 182-503-0520.

NEW SECTION

WAC 182-503-0555 Age requirement for MCS and ADATSA. To be eligible for medical care services (MCS) or the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program an individual must be:

- (1) Eighteen years of age or older; or
- (2) For MCS only, if under eighteen years of age, a member of a married couple:
 - (a) Residing together; or
 - (b) Residing apart solely because a spouse is:
 - (i) On a visit of ninety days or less;
 - (ii) In a public or private institution;
 - (iii) Receiving care in a hospital, long-term care facility, or chemical dependency treatment facility; or
 - (iv) On active duty in the uniformed military services of the United States.

NEW SECTION

WAC 182-503-0560 Impact of fleeing felon status on eligibility for medical care services (MCS). This section applies to medical care services (MCS).

(1) An individual is considered a **fleeing felon** if the individual is fleeing to avoid prosecution, custody, or confinement for a crime or an attempt to commit a crime that is considered a felony in the place from which the individual is fleeing.

(2) If the individual is a fleeing felon, or who is violating a condition of probation or parole as determined by an administrative body or court that has the authority to make this decision, is not eligible for MCS benefits.

NEW SECTION

WAC 182-504-0030 Medical certification periods for recipients of medical care services (MCS). (1) The certification period for medical care services (MCS) begins:

(a) The date the agency or the agency's designee has enough information to make an eligibility decision; or

(b) No later than the forty-fifth day from the date the agency or the agency's designee received the application unless the applicant is confined in a Washington state public institution as defined in WAC 388-406-0005 (6)(a) on the forty-fifth day, in which case MCS coverage will start on the date of release from confinement.

(2) The certification period may or may not run concurrently with the incapacity review; and

(3) MCS coverage may end before the certification period ends when the incapacity review and financial review do not run concurrently.

NEW SECTION

WAC 182-504-0040 Requirements for a midcertification review for medical care services (MCS). (1) A **midcertification review (MCR)** is a form sent by the agency or the agency's designee to gather information about the MCS recipient's current circumstances. The answers provided are used to determine if the individual remains eligible for medical coverage.

(2) A recipient of MCS must complete a midcertification review unless the review period is six months or less.

(3) The review form is sent in the fifth month of the MCS certification or review period and must be completed by the tenth day of month six.

(4) If the individual is required to complete a midcertification review, it can be completed in one of the following ways:

(a) **Complete the form and return it to the DSHS office.** The MCR will be considered complete if all of the following steps are taken:

(i) The form is completed in full and any changes in circumstances for the household are indicated;

(ii) The form is signed and dated;

(iii) Proof is provided of any changes that are reported; and

(iv) The form is returned to DSHS by mail or in person along with any required proof by the due date on the review.

(b) **Complete the midcertification review over the phone.** The MCR will be considered complete over the phone if all of the following steps are taken:

(i) DSHS is contacted at the phone number on the review form and told about any changes in the household's circumstances;

(ii) Proof is provided of any changes that are reported, and DSHS may be able to verify some information over the phone; and

(iii) Required proof is returned to DSHS by the due date on the review.

(c) **Complete the application process for another program.** If the agency or the agency's designee approves an application for another program in the month the MCR is due, the application is used to complete the review when the same individual is head of household for the application and the midcertification review.

(5) If eligibility for medical coverage ends because of the information provided in the midcertification review, the change takes effect the next month even if this does not give ten days notice before the effective date of the termination.

(6) If the required midcertification review is not completed, medical coverage under the MCS program stops at the end of the month the review was due.

(7) **Late reviews.** If the midcertification review is completed after the last day of the month the review was due, the agency or the agency's designee will process the review as described below based on when the review is received:

(a) **Midcertification reviews that are completed by the last day of the month after the month the review was due:** The agency or the agency's designee determines the MCS recipient's eligibility for ongoing medical coverage. If the individual is determined to be eligible, coverage is reinstated based on the information in the review, unless there is a wait list due to an enrollment cap under WAC 182-508-0150;

(b) **Midcertification reviews completed after the last day of the month after the month the review was due:** The agency or the agency's designee treats the review as a request to send an application. In order to determine eligibility for ongoing MCS medical coverage, the application process as described in chapter 388-406 WAC must be completed.

NEW SECTION

WAC 182-504-0100 Changes of circumstances—Changes that must be reported by a recipient of medical care services (MCS). (1) An individual who receives medical care services (MCS) coverage must report the following changes:

(a) A change in address;

(b) A change in who lives in the home with the individual;

(c) When the individual's total gross monthly income goes over the eligibility standards for MCS and ADATSA as listed in WAC 182-508-0230;

(d) When liquid resources are more than four thousand dollars;

(e) When the individual has a change in employment. The individual must notify the agency or the agency's designee if they:

- (i) Get a job or change employers;
- (ii) Change from part-time to full-time employment or from full-time to part-time employment;
- (iii) Have a change in hourly wage rate or salary; or
- (iv) Stop working.

(2) Changes listed in subsection (1) of this section must be reported to the agency or the agency's designee by the tenth day of the month following the month the change happened.

(3) When the change is a change in income, the date a change happened is the date the individual first received the income, e.g., the date of receipt of the first paycheck for a new job or the date of a paycheck showing a change in the amount of the individual's wage or salary.

(4) Changes that are reported late may result in receiving medical benefits to which the individual is not entitled.

NEW SECTION

WAC 182-504-0125 Effect of changes on medical program eligibility. (1) An individual continues to be eligible for medical assistance until the agency or the agency's designee completes a review of the individual's case record and determines the individual is ineligible for medical assistance or is eligible for another medical program. This applies to all individuals who, during a certification period, become ineligible for, or are terminated from, or request termination from:

- (a) A categorically needy (CN) medicaid program;
- (b) A program included in apple health for kids; or
- (c) Any of the following cash grants:
 - (i) Temporary assistance for needy families (TANF);
 - (ii) Supplemental Security Income (SSI); or
 - (iii) Aged, blind, disabled (ABD) cash assistance. See WAC 388-434-0005 for changes reported during eligibility review.

(2) If CN medical coverage ends under one program and the individual meets all the eligibility requirements to be eligible under a different CN medical program, coverage is approved under the new program. If the individual's income exceeds the standard for CN medical coverage, the agency or the agency's designee considers eligibility under the medically needy (MN) program where appropriate.

(3) If CN medical coverage ends and the individual does not meet the eligibility requirements to be eligible under a different medical program, the redetermination process is complete and medical assistance is terminated giving advance and adequate notice with the following exception:

(a) An individual who claims to have a disability is referred to the division of disability determination services for a disability determination if that is the only basis under which the individual is potentially eligible for medical assistance. Pending the outcome of the disability determination, medical eligibility is considered under the SSI-related medical program described in chapter 388-475 WAC.

(b) An individual with countable income in excess of the SSI-related CN medical standard is considered for medically

needy (MN) coverage or medically needy (MN) with spend-down pending the final outcome of the disability determination.

(4) An individual who becomes ineligible for refugee cash assistance is eligible for continued refugee medical assistance through the eight-month limit, as described in WAC 388-400-0035(4).

(5) An individual who receives a TANF cash grant or family medical is eligible for a medical extension, as described under WAC 388-523-0100, when the cash grant or family medical program is terminated as a result of:

- (a) An increase in earned income; or
 - (b) Collection of child or spousal support.
- (6) Changes in income during a certification period affects eligibility for all medical programs except:
- (a) Pregnant women's CN medical programs;
 - (b) A program included in apple health for kids, except as specified in subsection (5) of this section; or
 - (c) The first six months of the medical extension benefits described under chapter 388-523 WAC.

(7) A child who receives premium-based coverage under a program included in apple health for kids described in WAC 388-505-0210 and chapter 388-542 WAC must be redetermined for a nonpremium-based coverage when the family reports:

- (a) Family income has decreased to less than two hundred percent federal poverty level (FPL);
- (b) The child becomes pregnant;
- (c) A change in family size; or
- (d) The child receives SSI.

(8) An individual who receives SSI-related CN medical coverage and reports a change in earned income which exceeds the substantial gainful activity (SGA) limit set by Social Security Administration no longer meets the definition of a disabled individual as described in WAC 388-475-0050, unless the individual continues to receive a Title 2 cash benefit, e.g., SSDI, DAC, or DWB. The agency or the agency's designee redetermines eligibility for such an individual under the health care for workers with disabilities (HWD) program which waives the SGA income test. The HWD program is a premium-based program and the individual must approve the premium amount before the agency or the agency's designee can authorize ongoing CN medical benefits under this program.

NEW SECTION

WAC 182-506-0020 Assistance units for medical care services (MCS). (1) An adult who is incapacitated as defined in WAC 182-508-0010 can be in a medical care services assistance unit (AU).

(2) For an incapacitated adult who is married and lives with their spouse, the agency or the agency's designee decides who to include in the AU based on who is incapacitated:

(a) If both spouses are incapacitated as defined in WAC 182-508-0010, then the agency or the agency's designee includes both spouses in the AU.

(b) If only one spouse is incapacitated, then the agency or the agency's designee includes only the incapacitated

spouse in the AU. Some of the income of the spouse not in the AU is counted as income to the AU as determined according to WAC 388-450-0135.

Chapter 182-508 WAC

ADULT MEDICAL AND CHEMICAL DEPENDENCY **((ASSISTANCE PROGRAMS))**

NEW SECTION

WAC 182-508-0001 Medical assistance coverage for adults not covered under family medical programs. (1) An adult who does not meet the institutional status requirements as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for categorically needy (CN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for CN coverage when the individual:

(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 388-503-0505; and

(b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 388-478-0080; and

(c) Is sixty-five years of age or older, or meets the blind and/or disability criteria of the federal SSI program.

(2) An adult not meeting the conditions of subsection (1)(b) of this section is eligible for CN medical coverage if the individual:

(a) Is a current beneficiary of Title II of the Social Security Act (SSA) benefits who:

(i) Was a concurrent beneficiary of Title II and Supplemental Security Income (SSI) benefits;

(ii) Is ineligible for SSI benefits and/or state supplementary payments (SSP); and

(iii) Would be eligible for SSI benefits if certain cost-of-living (COLA) increases are deducted from the client's current Title II benefit amount:

(A) All Title II COLA increases under P.L. 94-566, section 503 received by the individual since their termination from SSI/SSP; and

(B) All Title II COLA increases received during the time period in (d)(iii)(A) of this subsection by the individual's spouse or other financially responsible family member living in the same household.

(b) Is an SSI beneficiary, no longer receiving a cash benefit due to employment, who meets the provisions of section 1619(b) of Title XVI of the SSA;

(c) Is a currently disabled individual receiving widow's or widower's benefits under section 202 (e) or (f) of the SSA if the disabled individual:

(i) Was entitled to a monthly insurance benefit under Title II of the SSA for December 1983;

(ii) Was entitled to and received a widow's or widower's benefit based on a disability under section 202 (e) or (f) of the SSA for January 1984;

(iii) Became ineligible for SSI/SSP in the first month in which the increase provided under section 134 of P.L. 98-21 was paid to the individual;

(iv) Has been continuously entitled to a widow's or widower's benefit under section 202 (e) or (f) of the SSA;

(v) Would be eligible for SSI/SSP benefits if the amount of that increase, and any subsequent COLA increases provided under section 215(i) of the SSA, were disregarded;

(vi) Is fifty through fifty-nine years of age; and

(vii) Filed an application for medicaid coverage before July 1, 1988.

(d) Was receiving, as of January 1, 1991, Title II disabled widow or widower benefits under section 202 (e) or (f) of the SSA if the individual:

(i) Is not eligible for the hospital insurance benefits under medicare Part A;

(ii) Received SSI/SSP payments in the month before receiving such Title II benefits;

(iii) Became ineligible for SSI/SSP due to receipt of or increase in such Title II benefits; and

(iv) Would be eligible for SSI/SSP if the amount of such Title II benefits or increase in such Title II benefits under section 202 (e) or (f) of the SSA, and any subsequent COLA increases provided under section 215(i) of the act were disregarded.

(e) Is a disabled or blind individual receiving Title II Disabled Adult Childhood (DAC) benefits under section 202(d) of the SSA if the individual:

(i) Is at least eighteen years old;

(ii) Lost SSI/SSP benefits on or after July 1, 1988, due to receipt of or increase in DAC benefits; and

(iii) Would be eligible for SSI/SSP if the amount of the DAC benefits or increase under section 202(d) of the DAC and any subsequent COLA increases provided under section 215(i) of the SSA were disregarded.

(f) Is an individual who:

(i) In August 1972, received:

(A) Old age assistance (OAA);

(B) Aid to blind (AB);

(C) Aid to families with dependent children (AFDC); or

(D) Aid to the permanently and totally disabled (APTD);

and

(ii) Was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or

(iii) Is eligible for OAA, AB, AFDC, SSI, or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(3) An adult who does not meet the institutional status requirement as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for medically needy (MN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for MN coverage when the individual:

(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 388-503-0505; and

(b) Has MN countable income that does not exceed the income standards in WAC 388-478-0080, or meets the excess

income spenddown requirements in WAC 388-519-0110; and

(c) Meets the countable resource standards in WAC 388-478-0070; and

(d) Is sixty-five years of age or older or meets the blind and/or disability criteria of the federal SSI program.

(4) MN coverage is available for an aged, blind, or disabled ineligible spouse of an SSI recipient. See WAC 388-519-0100 for additional information.

(5) An adult may be eligible for the alien emergency medical program as described in WAC 388-438-0110.

(6) An adult is eligible for the aged, blind, disabled program when the individual:

(a) Meets the requirements of the aged, blind, disabled program in WAC 388-400-0060 and 388-478-0033; or

(b) Meets the SSI-related disability standards but cannot get the SSI cash grant due to immigration status or sponsor deeming issues. An adult may be eligible for aged, blind, disabled cash benefits and CN medical coverage due to different sponsor deeming requirements.

(7) An adult is eligible for the state-funded medical care services (MCS) program when the individual:

(a) Meets the requirements under WAC 182-508-0005; or

(b) Meets the aged, blind, or disabled requirements of WAC 388-400-0060 and is a qualified alien as defined in WAC 388-424-0001 who is subject to the five-year bar as described in WAC 388-424-0006(3); or a nonqualified alien as defined in WAC 388-424-0001; or

(c) Meets the requirements of the ADATSA program as described in WAC 182-508-0320 and 182-508-0375.

(8) An adult receiving MCS who resides in a county designated as a mandatory managed care plan county must enroll in a plan, pursuant to WAC 182-538-063.

NEW SECTION

WAC 182-508-0005 Eligibility for medical care services. (1) An individual is eligible for medical care services (MCS) benefits to the extent of available funds if the individual:

(a) Completes an interview with the agency or its designee;

(b) Is incapacitated as required under WAC 182-508-0010 through 182-508-0120;

(c) Is at least eighteen years old or, if under eighteen, a member of a married couple;

(d) Is in financial need according to MCS' income and resource rules in chapter 182-509 WAC. The agency or the agency's designee determines who is in the individual's assistance unit according to WAC 182-506-0020;

(e) Meets the medical care services citizenship/alien status requirements under WAC 182-503-0532;

(f) Provides a Social Security number as required under WAC 388-476-0005;

(g) Resides in the state of Washington as required under WAC 182-503-0520;

(h) Reports changes of circumstances as required under WAC 182-504-0100; and

(i) Completes a midcertification review and provides proof of any changes as required under WAC 182-504-0040.

(2) An individual is not eligible for MCS benefits if the individual:

(a) Is eligible for temporary assistance for needy families (TANF) benefits.

(b) Refuses or fails to meet a TANF rule.

(c) Refuses to or fails to cooperate in obtaining federal aid assistance without good cause.

(d) Refuses or fails to participate in drug or alcohol treatment as required in WAC 182-508-0220.

(e) Is eligible for Supplemental Security Income (SSI) benefits.

(f) Is an ineligible spouse of an SSI recipient.

(g) Fails to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated the individual's benefits.

(h) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony as described in WAC 182-503-0560.

(i) Is eligible for a categorically needy (CN) medicaid program.

(j) Refuses or fails to cooperate with CN medicaid program rules or requirements.

(3) An individual who resides in a public institution and meets all other requirements may be eligible for MCS depending on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) An individual may be eligible for MCS if the individual is:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and is sixty-five years of age or older.

(b) An individual is not eligible for MCS when the individual is in the custody of or confined in a public institution such as a state penitentiary or county jail, including placement:

(i) In a work release program; or

(ii) Outside of the institution including home detention.

(4) If an enrollment cap exists under WAC 182-508-0150, a waiting list of persons may be established.

NEW SECTION

WAC 182-508-0010 Incapacity requirements for medical care services (MCS). Eligibility for the medical care services (MCS) program is based on an individual being incapacitated from working. For an individual to receive MCS program benefits, the agency or the agency's designee must determine the individual is incapacitated.

"Incapacitated" means that an individual cannot be gainfully employed as a result of a physical or mental impairment that is expected to continue for at least ninety days from the date the individual applies.

"Mental impairment" means a diagnosable mental disorder. The agency or the agency's designee excludes any diagnosis of or related to alcohol or drug abuse or addiction.

"Physical impairment" means a diagnosable physical illness.

(1) The agency or the agency's designee determines the individual is incapacitated if the individual is:

(a) Disabled based on Social Security Administration (SSA) disability criteria;

(b) Eligible for services from the division of developmental disabilities (DDD);

(c) Diagnosed as having mental retardation based on a full scale score of seventy or lower on the Wechsler adult intelligence scale (WAIS);

(d) At least sixty-four years and seven months old;

(e) Eligible for long-term care services from aging and disability services administration; or

(f) Approved through the progressive evaluation process (PEP).

(2) The agency or the agency's designee considers an individual to be incapacitated for ninety days after:

(a) The individual is released from inpatient treatment for a mental impairment if:

(i) The release from inpatient treatment was not against medical advice; and

(ii) There is no break in the individual's participation between inpatient and outpatient treatment of their mental impairment.

(b) The individual is released from a medical institution where the individual received long-term care services from the aging and disability services administration.

NEW SECTION

WAC 182-508-0015 Determining if an individual is incapacitated. When an individual applies for medical care services (MCS) program benefits, the individual must provide medical evidence to the agency or the agency's designee that shows the individual is unable to work.

If an individual is gainfully employed at the time of application for MCS, the agency or the agency's designee denies incapacity. "Gainful employment" means an individual is performing, in a regular and predictable manner, an activity usually done for pay or profit and earning more than the substantial gainful activity standard as defined by the Social Security Administration.

(1) The agency or the agency's designee doesn't consider work to be gainful employment when the individual is working:

(a) Under special conditions that go beyond the employer providing reasonable accommodation, such as in a sheltered workshop the agency or the agency's designee has approved; or

(b) Occasionally or part-time because the individual's impairment limits the hours the individual is able to work compared to unimpaired workers in the same job as verified by the individual's employer.

(2) The agency or the agency's designee determines if the individual is incapacitated when the individual:

(a) Applies for medical benefits;

(b) Becomes employed;

(c) Obtains work skills by completing a training program; or

(d) The agency or the agency's designee receives new information that indicates the individual may be employable.

(3) Unless the individual meets the other incapacity criteria in WAC 182-508-0010, the agency or the agency's designee decides incapacity by applying the progressive evaluation process (PEP) to the medical evidence that the individual provides that meets WAC 182-508-0030. The PEP is the sequence of eight steps described in WAC 182-508-0035 through 182-508-0110.

(4) If the individual has a physical or mental impairment and the individual is impaired by alcohol or drug addiction and does not meet the other incapacity criteria in WAC 182-508-0010, the agency or the agency's designee decides if the individual is eligible for MCS by applying the PEP described in WAC 182-508-0035 through 182-508-0110. The individual isn't eligible for MCS benefits if the individual is incapacitated primarily because of alcoholism or drug addiction.

(5) In determining incapacity, the agency or the agency's designee considers only the individual's ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling; and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and co-workers, tolerating the pressures of a work setting, maintaining appropriate behavior, and adapting to changes in a routine work setting.

NEW SECTION

WAC 182-508-0020 Acceptable medical evidence. The agency or the agency's designee accepts medical evidence from these sources:

(1) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

(a) A physician, which for medical care services (MCS) program purposes, includes:

(i) Medical doctor (M.D.);

(ii) Doctor of osteopathy (D.O.);

(iii) Doctor of optometry (O.D.) to evaluate visual acuity impairments;

(iv) Doctor of podiatry (D.P.) for foot disorders; and

(v) Doctor of dental surgery (D.D.S.) or doctor of medical dentistry (D.M.D.) for tooth abscesses or temporomandibular joint (TMJ) disorders.

(b) An advanced registered nurse practitioner (ARNP) for physical impairments that are within the ARNP's area of certification to treat;

(c) The chief of medical administration of the Veterans' Administration, or their designee, as authorized in federal law; or

(d) A physician assistant when the report is cosigned by the supervising physician.

(2) For a mental impairment, professionals licensed in Washington state or where the examination was performed:

(a) A psychiatrist;

- (b) A psychologist;
- (c) An advanced registered nurse practitioner certified in psychiatric nursing; or
- (d) At the agency's or the agency's designee's discretion:
 - (i) A person identified as a mental health professional within the regional support network mental health treatment system provided the person's training and qualifications at a minimum include having a master's degree and two years of mental health treatment experience; or
 - (ii) The physician who is currently treating the individual for a mental impairment.
- (3) **"Supplemental medical evidence"** means information from a health professional not listed in subsection (1) or (2) of this section and who can provide supporting medical evidence for impairments identified by any of the professionals listed in subsection (1) or (2) of this section. The agency includes as supplemental medical evidence sources:
 - (a) A health professional who has conducted tests on or provides ongoing treatment to the individual, such as a physical therapist, chiropractor, nurse, physician assistant;
 - (b) Workers at state institutions and agencies who are not health professionals and are providing or have provided medical or health-related services to the individual; or
 - (c) Chemical dependency professionals (CDPs) when requesting information on the effects of alcohol or drug abuse.

NEW SECTION

WAC 182-508-0030 Required medical evidence. An individual must provide medical evidence that clearly shows if that individual has an impairment and how that impairment prevents the individual from being capable of gainful employment. Medical evidence must be in writing and be clear, objective and complete.

- (1) Objective evidence for physical impairments means:
 - (a) Laboratory test results;
 - (b) Pathology reports;
 - (c) Radiology findings including results of X rays and computer imaging scans;
 - (d) Clinical finding including, but not limited to, ranges of joint motion, blood pressure, temperature or pulse; and documentation of a physical examination; or
 - (e) Hospital history and physical reports and admission and discharge summaries; or
 - (f) Other medical history and physical reports related to the individual's current impairments.
- (2) Objective evidence for mental impairments means:
 - (a) Clinical interview observations, including objective mental status exam results and interpretation.
 - (b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).
 - (c) Hospital, outpatient and other treatment records related to the individual's current impairments.
 - (d) Testing results, if any, including:
 - (i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or

(ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for an incapacity determination must be from a medical professional described in WAC 182-508-0020 and must include:

- (a) A diagnosis for the impairment, or impairments, based on an examination performed within twelve months of application;
- (b) A clear description of how the impairment relates to the individual's ability to perform the work-related activities listed in WAC 182-508-0015(5);
- (c) Documentation of how the impairment, or impairments, is currently limiting the individual's ability to work based on an examination performed within the ninety days of the date of application or the forty-five days before the month of incapacity review; and
- (d) Facts in addition to objective evidence to support the medical provider's opinion that the individual is unable to be gainfully employed, such as proof of hospitalization.
- (4) When making an incapacity decision, the agency or the agency's designee does not use the individual's report of symptoms as evidence unless objective evidence shows there is an impairment that could reasonably be expected to produce those symptoms.

(5) The agency or the agency's designee doesn't use symptoms related to substance abuse or a diagnosis of addiction or chemical dependency when determining incapacity when the only impairment supported by objective medical evidence is drug or alcohol addiction.

(6) The agency or the agency's designee considers diagnoses that are independent of addiction or chemical dependency when determining incapacity.

(7) The agency or the agency's designee determines the individual has a diagnosis that is independent of addiction or chemical dependency if the impairment will persist at least sixty days after the individual stops using drugs or alcohol.

(8) If the individual can't obtain medical evidence sufficient for the agency or its designee to determine if the individual is likely to be disabled without cost to the individual, and the individual meets other eligibility conditions in WAC 182-508-0005, the agency pays the costs to obtain objective evidence based on the agency's published payment limits and fee schedules.

(9) The agency or the agency's designee decides incapacity based solely on the objective information it receives. The agency or the agency's designee is not obligated to accept a decision that the individual is incapacitated or unemployable made by another agency or person.

(10) The agency or the agency's designee can't use a statement from a medical professional to determine that the individual is incapacitated unless the statement is supported by objective medical evidence.

NEW SECTION

WAC 182-508-0035 How severity ratings of impairment are assigned. (1) **"Severity rating"** means a rating of the extent of the individual's incapacity, and how severely it impacts the individual's ability to perform the basic work

activities. Severity ratings are assigned in Steps II through IV of the PEP. The following chart provides a description of levels of limitations on work activities and the severity ratings that would be assigned to each.

Effect on Work Activities	Degree of Impairment	Numerical Value
(a) There is no effect on performance of one or more basic work-related activities.	None	1
(b) There is no significant limit on performance of one or more basic work-related activities.	Mild	2
(c) There are significant limits on performance of one or more basic work-related activity.	Moderate	3
(d) There are very significant limits on the individual's performance of one or more basic work-related activities.	Marked	4
(e) The individual is unable to perform at least one basic work-related activity.	Severe	5

(2) The agency or the agency's designee uses the description of how the individual's condition impairs their ability to perform work activities given by the medical evidence provider to establish severity ratings when the impairments are supported by, and consistent with, the objective medical evidence.

(3) A contracted doctor reviews the individual's medical evidence and the ratings assigned to the individual's impairment when there is at least a moderate severity rating and the individual's impairment has lasted, or is expected to last, twelve months or more.

(4) The contracted doctor reviews the individual's medical evidence, severity ratings, and functional assessment to determine whether:

(a) The medical evidence is objective and sufficient to support the findings of the provider;

(b) Description of impairments is supported by the medical evidence; and

(c) Severity rating and assessment of functional limitations assigned by the agency or the agency's designee are consistent with the medical evidence.

(5) If the medical evidence provider's description of the individual's impairments is not consistent with other objective evidence the agency or the agency's designee has

obtained, the agency or the agency's designee takes the following action:

(a) If the individual's limitations are more severe than the impairments described, the agency or the agency's designee assigns a higher severity rating; or

(b) If the individual's limitations are less severe than the impairments described, the agency or the agency's designee assigns a lower severity rating; and

(c) The agency or the agency's designee gives clear and convincing reasons for rejecting the medical evidence provider's opinion.

NEW SECTION

WAC 182-508-0040 PEP Step I—Review of medical evidence required for eligibility determination. When the agency or the agency's designee receives the individual's medical evidence, the agency or the agency's designee reviews it to see if it is sufficient to decide whether the individual's circumstances meet incapacity requirements.

(1) The agency or the agency's designee requires a written medical report to determine incapacity. The report must:

(a) Contain sufficient information as described under WAC 182-508-0030;

(b) Be written by an authorized medical professional described in WAC 182-508-0020;

(c) Document the existence of a potentially incapacitating condition; and

(d) Indicate an impairment is expected to last ninety days or more from the application date.

(2) If the information received isn't clear, the agency or the agency's designee may require more information before the agency or the agency's designee decides the individual's ability to be gainfully employed. As examples, the agency or the agency's designee may require the individual to get more medical tests or be examined by a medical specialist.

(3) The agency or the agency's designee denies incapacity if:

(a) There is only one impairment and the severity rating is less than three;

(b) A reported impairment isn't expected to last ninety days or more from the date of application;

(c) The only impairment supported by objective medical evidence is drug or alcohol addiction; or

(d) The agency or the agency's designee doesn't have clear and objective medical evidence to approve incapacity.

NEW SECTION

WAC 182-508-0050 PEP Step II—Determining the severity of mental impairments. If the individual is diagnosed with a mental impairment by a professional described in WAC 182-508-0020, the agency or the agency's designee uses information from the provider to determine how the impairment limits work-related activities.

(1) The agency or the agency's designee reviews the following psychological evidence to determine the severity of the individual's mental impairment:

(a) Psychosocial and treatment history records;

(b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;

(c) Results of psychological tests; and

(d) Symptoms observed by the examining practitioner that show how the individual's impairment affects their ability to perform basic work-related activities.

(2) The agency or the agency's designee excludes diagnosis and related symptoms of alcohol or substance abuse or addiction when the only impairment supported by objective medical evidence is drug or alcohol addiction.

(3) If the individual is diagnosed with mental retardation, the diagnosis must be based on the Wechsler adult intelligence scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
85 or above	1
71 to 84	3
70 or lower	5

(4) If the individual is diagnosed with a mental impairment with physical causes, the agency or the agency's designee assigns a severity rating based on the most severe of the following four areas of impairment:

- (a) Short term memory impairment;
- (b) Perceptual or thinking disturbances;
- (c) Disorientation to time and place; or
- (d) Labile, shallow, or coarse affect.

(5) The agency or the agency's designee bases the severity of an impairment diagnosed as a mood, anxiety, thought, memory, personality, or cognitive disorder on a clinical assessment of the intensity and frequency of symptoms that:

- (a) Affect the individual's ability to perform basic work-related activities; and
- (b) Are consistent with a diagnosis of a mental impairment as listed in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).

(6) The agency or the agency's designee bases the severity rating for a functional mental impairment on accumulated severity ratings for the symptoms in subsection (5)(a) of this section as follows:

Symptom Ratings or Condition	Severity Rating
(a) The individual is diagnosed with a functional disorder with psychotic features;	Moderate (3)
(b) The individual has had two or more hospitalizations for psychiatric reasons in the past two years;	
(c) The individual has had more than six months of continuous psychiatric inpatient or residential treatment in the past two years;	

Symptom Ratings or Condition	Severity Rating
(d) The objective evidence and global assessment of functioning score are consistent with a significant limitation on performing one or more basic work activities.	Marked (4)
(e) The objective evidence and global assessment of functioning score are consistent with very significant limitations on ability to perform one or more basic work activities.	
(f) The objective evidence and global assessment of functioning score are consistent with the absence of ability to perform one or more basic work activities.	Severe (5)

(7) If the individual is diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, the agency or the agency's designee assigns a severity rating as follows:

Condition	Severity Rating
(a) Two or more disorders with moderate severity (3) ratings; or	Marked (4)
(b) One or more disorders rated moderate severity (3), and one rated marked severity (4).	
(c) Two or more disorders rated marked severity (4).	Severe (5)

(8) The agency or the agency's designee denies incapacity when the individual hasn't been diagnosed with a significant physical impairment and the individual's overall mental severity rating is one or two;

(9) The agency or the agency's designee approves incapacity when the individual has an overall mental severity rating of severe (5).

NEW SECTION

WAC 182-508-0060 PEP Step III—Determining the severity of physical impairments. The agency or the agency's designee must decide if the individual's physical impairment is serious enough to limit the individual's ability to be gainfully employed. "Severity of a physical impairment" means the degree that an impairment restricts the individual from performing basic work-related activities (see WAC 182-508-0015). Severity ratings range from one to five, with five being the most severe. The agency or the agency's designee will assign severity ratings according to the table in WAC 182-508-0035.

(1) The agency or the agency's designee assigns to each physical impairment a severity rating that is supported by medical evidence.

(2) If the individual's physical impairment is rated two, and there is no mental impairment or a mental impairment that is rated one, the agency or the agency's designee denies incapacity.

(3) If the individual's physical impairment is consistent with a severity rating of five, the agency or the agency's designee approves incapacity.

NEW SECTION

WAC 182-508-0070 PEP Step IV—Determining the severity of multiple impairments. (1) If an individual has more than one impairment, the agency or the agency's designee decides the overall severity rating by deciding if the individual's impairments have a combined effect on their ability to be gainfully employed. Each diagnosis is grouped by affected organ or function into one of thirteen "body systems." The thirteen body systems consist of:

- (a) Musculo-skeletal;
- (b) Special senses and speech;
- (c) Respiratory;
- (d) Cardiovascular;
- (e) Digestive;
- (f) Genito-urinary;
- (g) Hemic and lymphatic;
- (h) Skin;
- (i) Endocrine and obesity;
- (j) Neurological;
- (k) Mental disorders;
- (l) Neoplastic; and
- (m) Immune systems.

(2) The agency or the agency's designee follows these rules when there are multiple impairments:

(a) The agency or the agency's designee groups each diagnosis by body system.

(b) When an individual has two or more diagnosed impairments that limit work activities, the agency or the agency's designee assigns an overall severity rating as follows:

Client Condition	Severity Rating
(i) All impairments are in the same body system, are rated two and there is no cumulative effect on one or more basic work activities.	2
(ii) All impairments are in the same body system, are rated two and there is a cumulative effect on one or more basic work activities.	3
(iii) All impairments are in different body systems, are rated two and there is a cumulative effect on basic work activities.	

Client Condition	Severity Rating
(iv) Two or more impairments are in different body systems and are rated three.	4
(v) Two or more impairments are in different body systems; one is rated three and one is rated four.	
(vi) Two or more impairments in different body systems are rated four.	5

(c) The agency or the agency's designee denies incapacity when the overall severity rating is two.

(d) The agency or the agency's designee approves incapacity when the overall severity rating is five.

NEW SECTION

WAC 182-508-0080 PEP Step V—Determining level of function of mentally impaired individuals in a work environment. If an individual has a mental impairment, the agency or the agency's designee evaluates the individual's cognitive and social functioning in a work setting. "Functioning" means an individual's ability to perform typical tasks that would be required in a routine job setting and the individual's ability to interact effectively while working.

(1) The agency or the agency's designee evaluates cognitive and social functioning by assessing the individual's ability to:

- (a) Understand, remember, and persist in tasks by following very short and simple instructions.
- (b) Understand, remember, and persist in tasks by following detailed instructions.
- (c) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision.
- (d) Learn new tasks.
- (e) Perform routine tasks without special supervision.
- (f) Adapt to changes in a routine work setting.
- (g) Make simple work-related decisions.
- (h) Be aware of normal hazards and take appropriate precautions.
- (i) Ask simple questions or request assistance.
- (j) Communicate and perform effectively in a work setting.
- (k) Complete a normal workday and workweek without interruptions from psychologically based symptoms.
- (l) Set realistic goals and plan independently.
- (m) Maintain appropriate behavior in a work setting.

(2) The agency or the agency's designee approves incapacity when it has objective medical evidence, including a mental status exam (MSE) per WAC 182-508-0050, that demonstrates the individual is:

- (a) At least moderately impaired in their ability to understand, remember, and persist in tasks following simple instructions, and at least moderately limited in their ability to:
 - (i) Learn new tasks;
 - (ii) Be aware of normal hazards and take appropriate precautions; and

- (iii) Perform routine tasks without undue supervision; or
- (b) At least moderately impaired in the ability to understand, remember, and persist in tasks following complex instructions; and at least markedly limited in the ability to:
 - (i) Learn new tasks;
 - (ii) Be aware of normal hazards and take appropriate precautions; and
 - (iii) Perform routine tasks without undue supervision.
- (3) The agency or the agency's designee approves incapacity when the individual is moderately (rated three) impaired in their ability to:
 - (a) Communicate and perform effectively in a work setting; and
 - (b) Markedly (rated four) impaired in their ability to maintain appropriate behavior in a work setting.

NEW SECTION

WAC 182-508-0090 PEP Step VI—Determining level of function of physically impaired individuals in a work environment. In Step VI of the PEP, the agency or the agency's designee reviews the medical evidence provided and determines how an individual's physical impairment prevents that individual from working. This determination is then used in Steps VII and VIII of the PEP to determine the individual's ability to perform either work they have done in the past or other work.

(1) **"Exertion level"** means having strength, flexibility, and mobility to lift, carry, stand or walk as needed to fulfill job duties in the following work levels. For this section, "occasionally" means less than one third of the time and "frequently" means one third to two thirds of the time.

The following table is used to determine an individual's exertion level. Included in this table is a strength factor, which is an individual's ability to perform physical activities, as defined in Appendix C of the *Dictionary of Occupational Titles* (DOT), Revised Edition, published by the U.S. Department of Labor as posted on the Occupational Information Network (O.*NET).

If an individual is able to:	Then the individual is assigned this exertion level
(a) Lift no more than two pounds or unable to stand or walk.	Severely limited
(b) Lift ten pounds maximum and frequently lift or carry light-weight articles. Walking or standing only for brief periods.	Sedentary
(c) Lift twenty pounds maximum and frequently lift or carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the work-day. Sitting and using pushing	Light

If an individual is able to:	Then the individual is assigned this exertion level
or pulling arm or leg movements most of the day.	
(d) Lift fifty pounds maximum and frequently lift or carry up to twenty-five pounds.	Medium
(e) Lift one hundred pounds maximum and frequently lift or carry up to fifty pounds.	Heavy

(2) **"Exertionally related limitation"** means a restriction in mobility, agility or flexibility in the following twelve activities: Balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping. If an individual has exertionally related limitations, then the agency or the agency's designee considers them in determining the individual's ability to work.

(3) **"Functional physical capacity"** means the degree of strength, agility, flexibility, and mobility an individual can apply to work-related activities. The agency or the agency's designee considers the effect of the physical impairment on the ability to perform work-related activities when the physical impairment is assigned an overall severity rating of three or four. The agency or the agency's designee determines functional physical capacity based on the individual's exertional, exertionally related and nonexertional limitations. All limitations must be substantiated by the medical evidence and directly related to the diagnosed impairment(s).

(4) **"Nonexertional physical limitation"** means a restriction on work activities that does not affect strength, mobility, agility, or flexibility. Examples are:

- (a) Environmental restrictions which could include, among other things, an individual's inability to work in an area where they would be exposed to chemicals; and
- (b) Workplace restrictions, such as impaired hearing or speech, which would limit the types of work environments an individual could work in.

NEW SECTION

WAC 182-508-0100 PEP Step VII—Evaluating a client's capacity to perform relevant past work. If the individual's overall severity rating is moderate (three) or marked (four) at this stage of the PEP and the agency or the agency's designee has not approved or denied the individual's application, then the agency or the agency's designee will decide if the individual can do the same or similar work as they have done in the past. The agency or the agency's designee looks at the individual's current physical and/or mental limitations from cognitive, social, and vocational factors to make this decision. Vocational factors are education, relevant work history, and age.

(1) The agency or the agency's designee evaluates education in terms of formal schooling or other training that would enable the individual to meet job requirements. Education is classified as:

If the individual:	Then the individual's education level is
(a) Can't read or write a simple communication, such as two sentences or a list of items.	Illiterate
(b) Has no formal schooling or vocational training beyond the eleventh grade; or (c) Has participated in special education in basic academic classes of reading, writing, or mathematics in high school.	Limited education
(d) Has received a high school diploma or general equivalency degree (GED); or (e) Has received skills training and was awarded a certificate, degree or license.	High school and above level of education

(2) The agency or the agency's designee evaluates the individual's work experience to determine if they have relevant past work. "Relevant past work" means work that:

- (a) Is defined as gainful employment per WAC 182-508-0015;
- (b) Has been performed in the past five years; and
- (c) The individual performed long enough to acquire the knowledge and skills to continue performing the job. The individual must meet the specific vocational preparation level as defined in Appendix C of the *Dictionary of Occupational Titles*.

(3) For each relevant past work situation that the individual had, the agency or the agency's designee determines:

- (a) The exertion or skill requirements of the job; and
- (b) Current cognitive, social, or nonexertion factors that significantly limit the individual's ability to perform past work.

(4) After considering vocational factors, the agency or the agency's designee denies incapacity when the individual has:

- (a) The physical and mental ability to perform past work, and there is no significant cognitive, social or exertion limitation that would prevent the individual from performing past work; or
- (b) Recently acquired specific work skills through completion of schooling or training, for jobs within the individual's current physical or mental capacities.

(5) The agency or the agency's designee approves incapacity when the individual is fifty-five years of age or older and doesn't have the physical or mental ability to perform past work.

NEW SECTION

WAC 182-508-0110 PEP Step VIII—Evaluating a client's capacity to perform other work. If the individual decides they cannot do work that they've done before, then

the agency or the agency's designee decides if the individual can do any other work.

(1) The agency or the agency's designee approves incapacity if the individual has a physical impairment and meets the vocational factors below:

Highest Work Level Assigned by the Practitioner	Age	Education Level	Other Vocational Factors
Sedentary	Any age	Any level	Does not apply
Light	50 and older	Any level	Does not apply
Light	35 and older	Illiterate or LEP	Does not apply
Light	18 and older	Limited Education	Does not have any past work
Medium	50 and older	Limited Education	Does not have any past work

(2) The agency or the agency's designee approves incapacity when the individual has a moderate (three) or marked (four) mental health impairment and the agency or the agency's designee has objective medical evidence, including a mental status exam (MSE) per WAC 182-508-0050, that demonstrates social or cognitive factors described in WAC 182-508-0080, interfere with working as follows:

Social Limitation	Age
(a) Moderately impaired (rated three) in the individual's ability to: <ul style="list-style-type: none"> (i) Communicate and perform effectively in a work setting; and (ii) Maintain appropriate behavior in a work setting. 	50 years and older
(b) The individual has a severe (five) impairment in their ability to communicate and perform effectively in a work setting.	Any age
(c) A mental disorder of marked severity (rated four): <ul style="list-style-type: none"> (i) One or more severe (rated five) mental impairment symptoms; and (ii) Moderately impaired (rated three) in the ability to communicate and perform effectively in a work setting. 	Any age

(3) The agency or the agency's designee approves incapacity when the individual has both mental and physical impairments and the agency or the agency's designee has

objective medical evidence, including a mental status exam (MSE) per WAC 182-508-0050, that demonstrate social or cognitive factors, as described in WAC 182-508-0080 interfere with working as follows:

Age	Education	Other Restrictions
Any age	Any level	The individual is moderately impaired in their ability to communicate and perform effectively in a work setting.
50 or older	Limited education	Restricted to medium work level or less.
Any age	Limited education	Restricted to light work level.

(4) The agency or the agency's designee denies incapacity if the agency or the agency's designee decides the individual doesn't meet the criteria listed above.

NEW SECTION

WAC 182-508-0120 Deciding how long a client is incapacitated. The agency or the agency's designee decides how long an individual is incapacitated, up to the maximum period set by WAC 182-508-0160, using medical evidence on the expected length of time needed to heal or recover from the incapacitating disorder(s).

NEW SECTION

WAC 182-508-0130 Medical care services—Limited coverage. (1) The agency covers only the medically necessary services within the applicable program limitations listed in WAC 182-501-0060.

(2) The agency does not cover medical services received outside the state of Washington unless the medical services are provided in a border city listed in WAC 182-501-0175.

NEW SECTION

WAC 182-508-0150 Enrollment cap for medical care services (MCS). (1) Enrollment in medical care services (MCS) coverage is subject to available funds.

(2) The agency may limit enrollment into MCS coverage by implementing an enrollment cap and waiting list.

(3) If an individual is denied MCS coverage due to an enrollment cap:

(a) The individual is added to the MCS waiting list based on the date the individual applied.

(b) Applicants with the oldest application date will be the first to receive an opportunity for enrollment when MCS coverage is available.

(4) An individual is exempted from the enrollment cap and wait list rules when:

(a) MCS was terminated due to agency error;

(b) The individual is in the thirty-day reconsideration period for incapacity reviews under WAC 182-508-0160(4); or

(c) The individual is being terminated from a CN medical program and was receiving and eligible for CN coverage prior to the date a wait list was implemented and the following conditions are met:

(i) The individual met financial and program eligibility criteria for MCS at the time their CN coverage ended; and

(ii) The individual met the incapacity criteria for MCS at the time their CN coverage ended.

(d) The individual applied for medical coverage and an eligibility decision was not completed prior to the enrollment cap effective date.

(5) If the individual is sent an offer for MCS enrollment, the individual must submit a completed application no later than the last day of the month following the month of enrollment offer. The individual must reapply within this time period and subsequently be determined eligible before MCS coverage can begin. The individual must reapply and requalify even if the individual was previously determined eligible for MCS.

(6) The individual is removed from the MCS wait list if the individual:

(a) Is not a Washington resident;

(b) Is deceased;

(c) Requests removal from the wait list;

(d) Fails to submit an application after an enrollment offer is sent as described in subsection (5) of this section;

(e) Reapplies as described in subsection (5) of this section, but does not qualify for MCS; or

(f) Is found eligible for categorically or medically needy coverage.

NEW SECTION

WAC 182-508-0160 When medical care services benefits end. (1) The maximum period of eligibility for medical care services (MCS) is twelve months before the agency or the agency's designee must review incapacity. The agency or the agency's designee uses current medical evidence and the expected length of time before the individual will be capable of gainful employment to decide when MCS benefits will end.

(2) The individual's benefits stop at the end of the individual's incapacity period unless the individual provides additional medical evidence that demonstrates during the current incapacity period that there was no material improvement in the individual's impairment. No material improvement means that the individual's impairment continues to meet the progressive evaluation process criteria in WAC 182-508-0015 through 182-508-0110, excluding the requirement that the individual's impairment(s) prevent employment for ninety days.

(3) The medical evidence must meet all of the criteria defined in WAC 182-508-0030.

(4) The agency or the agency's designee uses medical evidence received after the individual's incapacity period had ended when:

(a) The delay was not due to the individual's failure to cooperate; and

(b) The agency or the agency's designee receives the evidence within thirty days of the end of the individual's incapacity period; and

(c) The evidence meets the progressive evaluation process criteria in WAC 182-508-0015 through 182-508-0110.

(5) Even if the individual's condition has not improved, the individual isn't eligible for MCS when:

(a) The agency or the agency's designee receives current medical evidence that doesn't meet the progressive evaluation process criteria in WAC 182-508-0035 through 182-508-0110; and

(b) The agency's or the agency designee's prior decision that the individual's incapacity met the requirements was incorrect because:

(i) The information the agency or the agency's designee had was incorrect or not enough to show incapacity; or

(ii) The agency or the agency's designee didn't apply the rules correctly to the information it had at that time.

NEW SECTION

WAC 182-508-0220 How alcohol or drug dependence affects an individual's eligibility for medical care services (MCS). (1) An individual who gets medical care services (MCS) must complete a chemical dependency assessment when the agency or the agency's designee has information that indicates the individual may be chemically dependent.

(2) An individual must accept an assessment referral and participate in drug or alcohol treatment if a certified chemical dependency counselor indicates a need for treatment, unless the individual meets one of the following good cause reasons:

(a) The agency or the agency's designee determines that the individual's physical or mental health impairment prevents them from participating in treatment.

(b) The outpatient chemical dependency treatment the individual needs isn't available in the county they live in.

(c) The individual needs inpatient chemical dependency treatment at a location that they can't reasonably access.

(3) If an individual refuses or fails to complete an assessment or treatment without good cause, the individual's MCS coverage will end following advance notification rules under WAC 388-458-0030.

NEW SECTION

WAC 182-508-0230 Eligibility standards for medical care services (MCS); aged, blind, disabled (ABD); and Alcohol and Drug Addiction Treatment and Support Act (ADATSA). The eligibility standards for MCS, ABD medical, and ADATSA program assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Eligibility Standard
1	\$339
2	\$428

The eligibility standards for MCS and ADATSA assistance units with shelter provided at no cost are:

Assistance Unit Size	Eligibility Standard
1	\$206
2	\$261

The eligibility standards for MCS assistance units in medical institutions and group living facilities are:

Facility Type	Assistance Unit Size	Eligibility Standard
Medical institutions (includes nursing homes and hospitals)	1	41.62
Adult family homes	1	339.00
Boarding homes (includes assisted living, enhanced residential centers (EARC), and adult residential centers (ARC))	1	38.84
DDD group home	1	38.84
Mental Health adult residential treatment facilities (ARTF)	1	38.84

NEW SECTION

WAC 182-508-0305 Detoxification—Covered services. (1) The agency or the agency's designee only pays for services that are:

(a) Provided to eligible individuals as described in subsection (5) of this section;

(b) Directly related to detoxification; and

(c) Performed by a certified detoxification center or by a general hospital that has a contract with the department of social and health services to provide detoxification services.

(2) The agency limits on paying for detoxification services are:

(a) Three days for an acute alcoholic condition; or

(b) Five days for acute drug addiction.

(3) The agency only pays for detoxification services when notified within ten working days of the date detoxification began and all eligibility factors are met.

(4) To apply for detoxification services, an individual must complete an application for benefits. An interview is not required when applying for medical assistance. However, additional documentation may be needed to prove or confirm the information provided in the application form.

(5) An individual is eligible for detoxification services if the individual receives benefits under one of the following programs:

(a) Temporary assistance for needy families (TANF);

(b) Aged, blind, disabled cash assistance program (ABD);

(c) Supplemental Security Income (SSI);

(d) Medical care services program (MCS);

(e) Alcohol and Drug Addiction Treatment and Support Act (ADATSA); or

(f) A medical assistance program.

(6) An individual who is not eligible for one of the programs listed in subsection (5) of this section is eligible for the detoxification program if they meet the following criteria:

(a) Nonexempt countable income does not exceed the eligibility standards for MCS and ADATSA as described in WAC 182-508-0230; and

(b) Nonexempt countable resources do not exceed one thousand dollars.

(7) The following expenses are deducted from income when determining countable income:

(a) Mandatory expenses of employment;

(b) Support payments paid under a court order; and

(c) Payments to a wage earner specified by a court in bankruptcy proceedings, or previously contracted major household repairs, when failure to make such payments will result in garnishment of wages or loss of employment.

(8) The following resources are not counted when determining countable resources:

(a) A home;

(b) Household furnishings and personal clothing essential for daily living;

(c) Other personal property used to reduce need for assistance or for rehabilitation;

(d) A used and useful automobile; and

(e) All income and resources of a noninstitutionalized SSI beneficiary.

(9) The following resources are counted when determining countable resources:

(a) Cash and other liquid assets;

(b) Marketable securities; and

(c) Any other resource not specifically exempted that can be converted to cash.

(10) If an individual receives detoxification services, the individual will not incur a deductible as a factor of eligibility for the covered period of detoxification.

(11) Once an individual has been determined eligible for detoxification services, the individual is eligible from the date detoxification begins through the end of the month in which the detoxification is completed.

NEW SECTION

WAC 182-508-0310 ADATSA—Purpose. (1) The Alcohol and Drug Addiction Treatment and Support Act (ADATSA) is a legislative enactment providing state-funded treatment and support to chemically dependent indigent individuals.

(2) ADATSA provides eligible individuals with treatment if they are chemically dependent and would benefit from it.

NEW SECTION

WAC 182-508-0315 ADATSA—Covered services. If an individual qualifies for the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) they may be eligible for:

(1) Alcohol/drug treatment services and support based on an individual assessment of alcohol/drug involvement and treatment needs in accordance with RCW 70.96A.100.

(2) Medical care services (MCS) as described under WAC 182-508-0005, 182-501-0060, and 182-501-0065.

NEW SECTION

WAC 182-508-0320 ADATSA—Eligible individuals.

(1) To be eligible for the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) services, an individual must:

(a) Be eighteen years of age or older;

(b) Be a resident of Washington as defined in WAC 182-503-0520;

(c) Meet citizenship requirements as described in WAC 182-503-0532;

(d) Provide their Social Security number; and

(e) Meet the same income and resource criteria for the medical care services (MCS) program (unless subsection (3) of this section applies), or receive federal assistance under Supplemental Security Income (SSI) or temporary assistance for needy families (TANF).

(2) An individual is not eligible for the ADATSA program if the individual is otherwise eligible for TANF and loses their eligibility for medical coverage due to:

(a) Noncooperation with the division of child support requirements; or

(b) Failure to cooperate with third-party liability (TPL) requirements to identify any potential third-party payors for medical coverage.

(3) An individual with nonexcluded countable income higher than the MCS eligibility standard described in WAC 182-508-0230 may qualify for inpatient only residential treatment if total countable income is below the projected monthly cost of care in the treatment center based on the state daily reimbursement rate.

NEW SECTION

WAC 182-508-0375 ADATSA—Eligibility for state-funded medical care services (MCS). An ADATSA-eligible individual is eligible for state-funded medical care services (MCS) when one of the following situations exists:

(1) The individual meets the requirements in WAC 182-508-0320 and be waiting to receive the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) services;

(2) The individual is participating in ADATSA residential or outpatient treatment; or

(3) The individual has chosen opiate dependency (methadone maintenance) chemical dependency treatment services instead of other ADATSA treatment, but only if these treatment services are from a state-approved, publicly funded opiate dependency/methadone maintenance program.

Chapter 182-509 WAC

INCOME AND RESOURCES ((FOR MEDICAL PROGRAMS))NEW SECTION

WAC 182-509-0005 MCS income—Ownership and availability. This section applies to medical care services (MCS) program.

(1) The agency or the agency's designee counts all available income owned or held by persons in the assistance unit under WAC 182-506-0020 to decide if the individual is eligible for benefits when:

(a) The individual gets or expects to get income in the month.

(b) The agency or the agency's designee must count the income based on rules under this chapter.

(c) The individual owns the income. The agency or the agency's designee uses state and federal laws about who owns property to decide if the individual actually owns the income. If the individual is married, the agency or the agency's designee decides if the income is separate or community income according to chapter 26.16 RCW.

(d) The individual has control over the income, which means the income is actually available to the individual. If the individual has a representative payee, protective payee, or other person who manages the individual's income, the agency or the agency's designee considers this as the individual having control over this income.

(e) The individual can use the income to meet their current needs. The agency or the agency's designee counts the gross amount of available income in the month the individual's assistance unit gets it. If the individual normally gets the income:

(i) On a specific day, the agency or the agency's designee counts it as available on that date.

(ii) Monthly or twice monthly and the pay date changes due to a reason beyond the individual's control, such as a weekend or holiday, the agency or the agency's designee counts it in the month the individual would normally get it.

(iii) Weekly or every other week and the pay date changes due to a reason beyond the individual's control, the agency or the agency's designee counts it in the month the individual would normally get it.

(2) If income is legally the individual's designee, the agency or the agency's designee considers the income as available to the individual even if it is paid to someone else for the individual.

(3) The agency or the agency's designee:

(a) May count the income of certain people who live in the individual's home, even if they are not getting or applying for benefits. Their income counts as part of the individual's income.

(b) Counts the income of ineligible, disqualified, or financially responsible people as defined in WAC 182-509-0100.

(4) If the individual has a joint bank account with someone who is not in the individual's assistance unit (AU), the

agency or the agency's designee counts any money deposited into that account as the individual's income unless:

(a) The individual can show that all or part of the funds belong **only** to the other account holder and are held or used **only** for the benefit of that holder; or

(b) Social Security Administration (SSA) used that money to determine the other account holder's eligibility for SSI benefits.

(5) Potential income is income the individual may be able to get that can be used to lower their need for assistance. If the agency or the agency's designee determines that the individual has a potential source of income, the individual must make a reasonable effort to make the income available in order to get MCS. The agency or the agency's designee does not count that income until the individual actually gets it.

(6) If the individual's AU includes a sponsored immigrant, the agency or the agency's designee considers the income of the immigrant's sponsor as available to the immigrant under the rules of this chapter. The agency or the agency's designee uses this income when deciding if the individual's AU is eligible for benefits and to calculate the individual's monthly benefits.

(7) The individual may give the agency or the agency's designee proof about a type of income at anytime, including when the agency or the agency's designee asks for it or if the individual disagrees with a decision the agency or the agency's designee made, about:

(a) Who owns the income;

(b) Who has legal control of the income;

(c) The amount of the income; or

(d) If the income is available.

NEW SECTION

WAC 182-509-0015 MCS income—Excluded income types. There are some types of income that do not count when determining if an individual is eligible for medical care services (MCS) coverage. Examples of income that do not count are:

(1) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 182-509-0035;

(2) Federal earned income tax refunds and earned income tax credit (EITC) payments for up to twelve months from the date of receipt;

(3) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(4) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(5) Title IV-E and state foster care maintenance payments if the individual chooses not to include the foster child in the assistance unit;

(6) Energy assistance payments;

(7) Educational assistance that is not counted under WAC 182-509-0035;

(8) Native American benefits and payments that are not counted under WAC 388-450-0040;

(9) Income from employment and training programs that is not counted under WAC 182-509-0045;

(10) Money withheld from a benefit to repay an overpayment from the same income source;

(11) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as voluntary agency (VOLAG) payments;

(12) Payments we are directly told to exclude as income under state or federal law; and

(13) Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household.

NEW SECTION

WAC 182-509-0025 MCS income—Unearned income. This section applies to medical care services (MCS).

(1) Unearned income is income an individual gets from a source other than employment or self-employment. Some examples of unearned income are:

- (a) Railroad retirement;
- (b) Unemployment compensation;
- (c) Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);
- (d) Time loss benefits as described in WAC 388-450-0010, such as benefits from the department of labor and industries (L&I); or
- (e) Veteran Administration benefits.

(2) The agency or the agency's designee counts unearned income before any taxes are taken out.

NEW SECTION

WAC 182-509-0030 MCS income—Earned income. This section applies to medical care services (MCS).

(1) Earned income money received from working. This includes:

- (a) Wages;
- (b) Tips;
- (c) Commissions;
- (d) Profits from self-employment activities as described in WAC 182-509-0080; and
- (e) One-time payments for work performed over a period of time.

(2) Income received for work performed for something other than money, such as rent, is considered earned income. The amount that is counted when determining the individual's eligibility for MCS is the amount received before any taxes are taken out (gross income).

NEW SECTION

WAC 182-509-0035 MCS income—Educational benefits. This section applies to medical care services (MCS).

(1) Educational benefits that do not count are:

- (a) Educational assistance in the form of grants, loans or work study, issued from Title IV of the Higher Education Amendments (Title IV - HEA) and Bureau of Indian Affairs (BIA) education assistance programs. Examples of Title IV - HEA and BIA educational assistance include, but are not limited to:

(i) College work study (federal and state);

(ii) Pell grants; and

(iii) BIA higher education grants.

(b) Educational assistance in the form of grants, loans or work study made available under any program administered by the Department of Education (DOE) to an undergraduate student. Examples of programs administered by DOE include, but are not limited to:

(i) Christa McAuliffe Fellowship Program;

(ii) Jacob K. Javits Fellowship Program; and

(iii) Library Career Training Program.

(2) For assistance in the form of grants, loans or work study under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-391:

(a) If the individual is attending school half time or more, the following expenses are subtracted:

(i) Tuition;

(ii) Fees;

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study;

(iv) Books;

(v) Supplies;

(vi) Transportation;

(vii) Dependent care; and

(viii) Miscellaneous personal expenses.

(b) If the individual is attending school less than half time, the following expenses are subtracted:

(i) Tuition;

(ii) Fees; and

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study.

(c) The MCS eligibility standard based on one person is also subtracted.

(d) Any remaining income is unearned income and budgeted using the appropriate budgeting method for the assistance unit.

(3) If the individual is participating in a work study that is not excluded in subsection (1) of this section, that work study income is counted as earned income under the following conditions:

(a) The individual is allowed the earned income work incentive deduction described in WAC 182-509-0175; and

(b) The remaining income is budgeted using the appropriate budgeting method for the assistance unit.

(4) If the individual receives Veteran's Administration Educational Assistance:

(a) All applicable attendance costs are subtracted; and

(b) The remaining unearned income is budgeted using the appropriate budgeting method for the assistance unit.

NEW SECTION

WAC 182-509-0045 MCS income—Employment and training programs. This section applies to medical care services (MCS).

(1) All payments issued under the Workforce Investment Act (WIA) are excluded.

(2) All payments issued under the National and Community Service Trust Act of 1993 are excluded. This includes payments made through the AmeriCorps program.

(3) All payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps Vista, university year for action, and urban crime prevention program are excluded.

(4) All payments issued under Title II of the Domestic Volunteer Act of 1973 are excluded. These include:

- (a) Retired senior volunteer program (RSVP);
- (b) Foster grandparents program; and
- (c) Senior companion program.

(5) Training allowances from vocational and rehabilitation programs are counted as earned income when:

(a) The program is recognized by federal, state, or local governments; and

(b) The allowance is not a reimbursement.

(6) When an MCS client receives training allowances, the following is allowed:

(a) The earned income incentive and work expense deduction specified under WAC 182-509-0175, when applicable; and

(b) The actual cost of uniforms or special clothing required for the course as a deduction, if enrolled in a remedial education or vocational training course.

NEW SECTION

WAC 182-509-0055 MCS income—Needs-based assistance from other agencies or organizations. (1) Needs-based assistance given to the individual by other agencies or organizations is not counted if the assistance is given for reasons other than ongoing living expenses which do not duplicate the purpose of DSHS cash assistance programs. Ongoing living expenses include the following items:

- (a) Clothing;
- (b) Food;
- (c) Household supplies;
- (d) Medical supplies (nonprescription);
- (e) Personal care items;
- (f) Shelter;
- (g) Transportation; and
- (h) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(2) "Needs-based" means eligibility is based on an asset test of income and resources relative to the federal poverty level (FPL). This definition excludes such incomes as retirement benefits or unemployment compensation which are not needs-based.

(3) If the needs-based assistance is countable, it is treated as unearned income under WAC 182-509-0025.

NEW SECTION

WAC 182-509-0065 MCS income—Gifts—Cash and noncash. This section applies to medical care services. A gift is an item furnished to an individual without work or cost on the individual's part.

(1) A cash gift is a gift that is furnished as money, cash, checks or any other readily negotiable form. Cash gifts total-

ing no more than thirty dollars per calendar quarter for each assistance unit member are disregarded as income.

(2) A noncash gift is treated as a resource.

(a) If the gift is a countable resource, its value is added to the value of the individual's existing countable resources and a determination is made on the impact to continue the individual's eligibility for MCS, per WAC 182-509-0005.

(b) If the gift is an excluded or noncountable resource, it does not affect the individual's eligibility or benefit level.

NEW SECTION

WAC 182-509-0080 MCS income—Self-employment income. This section applies to medical care services (MCS).

(1) Self-employment income is income that is earned by an individual from running a business, performing a service, selling items that are made by the individual or by reselling items to make a profit.

(2) An individual is self-employed if the individual earns income without having an employer/employee relationship with the person who pays for the goods or services. This includes, but is not limited to, when:

(a) The individual has primary control of the way they do their work; or

(b) Income is reported by the individual using IRS Schedule C, Schedule C-EZ, Schedule K-1, or Schedule SE.

(3) An individual usually is considered to have an employer/employee relationship when:

(a) The person the individual provides services for has primary control of how the individual does their work; or

(b) The individual gets an IRS form W-2 to report their income.

(4) Self-employment does not have to be a licensed business for the individual's business or activity to qualify as self-employment. Some examples of self-employment include:

(a) Childcare that requires a license under chapter 74.15 RCW;

(b) Driving a taxi cab;

(c) Farming/fishing;

(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;

(e) Running a lodging for roomers and/or boarders. Roomer income includes money paid to the individual for shelter costs by someone not in your assistance unit who lives with the individual when:

(i) The individual owns or is buying their own residence; or

(ii) The individual rents all or a part of their residence and the total rent charges to all others living in the home is more than the individual's total rent.

(f) Running an adult family home;

(g) Providing services such as a massage therapist or a professional escort;

(h) Retainer fees to reserve a bed for a foster child;

(i) Selling items that are home-made or items that are supplied to the individual;

(j) Selling or donating biological products such as providing blood or reproductive material for profit;

(k) Working as an independent contractor; and

(1) Running a business or trade either as a sole proprietorship or in a partnership.

(5) If the individual is an employee of a company or person who does the activities listed in subsection (2) of this section as a part of their job, the agency or the agency's designee does not count the work that is performed by the individual as self-employment.

(6) Self-employment income is counted as earned income as described in WAC 182-509-0030 except as described in subsection (7) of this section.

(7) There are special rules about renting or leasing out property or real estate that is owned by the individual. If the individual does not spend at least twenty hours per week managing the property, the income is counted as unearned income.

NEW SECTION

WAC 182-509-0085 MCS income—Self-employment income—Calculation of countable income. This section applies to medical care services (MCS). The agency or the agency's designee decides how much of an individual's self-employment income to count by:

(1) Counting actual income in the month of application. This is done by:

(a) Adding together the individual's gross self-employment income and any profit the individual made from selling their business property or equipment;

(b) Subtracting the individual's business expenses as described in subsection (2) of this section; and

(c) Dividing the remaining amount of self-employment income by the number of months over which the income will be averaged.

(2) Subtracting one hundred dollars as a business expense even if the individual's costs are less than this. If the individual's costs are more than one hundred dollars, the agency or the agency's designee may subtract the individual's actual costs if the individual provides proof of their expenses. The following expenses are never allowed:

(a) Federal, state, and local income taxes;

(b) Money set aside for retirement purposes;

(c) Personal work-related expenses (such as travel to and from work);

(d) Net losses from previous periods;

(e) Depreciation; or

(f) Any amount that is more than the payment the individual gets from a boarder for lodging and meals.

(3) If the individual has worked at their business for less than a year, figuring the individual's gross self-employment income by averaging:

(a) The income over the period of time the business has been in operation; and

(b) The monthly amount is estimated to be the amount the individual will get for the coming year.

(4) If the individual's self-employment expenses are more than their self-employment income, not using this "loss" to reduce income from other self-employment businesses or other sources of income to the assistance unit.

NEW SECTION

WAC 182-509-0095 MCS income—Allocating income—General. This section applies to medical care services (MCS).

(1) Allocation is the process of determining how much of a financially responsible person's income is considered available to meet the needs of legal dependents within or outside of an assistance unit (AU).

(2) **"In-bound allocation"** means income possessed by a financially responsible person outside the AU which is considered available to meet the needs of legal dependents in the AU.

(3) **"Out-bound allocation"** means income possessed by a financially responsible AU member which is set aside to meet the needs of a legal dependent outside the AU.

NEW SECTION

WAC 182-509-0100 MCS income—Allocating income—Definitions. The following definitions apply to the allocation rules for medical care services (MCS):

(1) **"Dependent"** means a person who:

(a) Is or could be claimed for federal income tax purposes by the financially responsible person; or

(b) The financially responsible person is legally obligated to support.

(2) **"Financially responsible person"** means a parent, stepparent, adoptive parent, spouse or caretaker relative.

(3) **"Ineligible assistance unit member"** means a person who is:

(a) Ineligible for MCS due to the citizenship/alien status requirements in WAC 182-503-0532;

(b) Ineligible to receive MCS under WAC 182-503-0560 for fleeing to avoid prosecution or custody or confinement after conviction for a crime or attempt to commit a crime; or

(c) Ineligible to receive MCS under WAC 182-503-0560 for violating a condition of probation or parole which was imposed under federal or state law as determined by an administrative body or court of competent jurisdiction.

NEW SECTION

WAC 182-509-0110 MCS income—Allocating income to legal dependents. This section applies to medical care services (MCS).

(1) The income of an individual is reduced by the following:

(a) The MCS earned income work incentive deduction as specified in WAC 182-509-0175; and

(b) An amount not to exceed the ordered amount paid for court or administratively ordered current or back support for legal dependents living outside the home.

(2) When an individual resides in a medical institution, alcohol or drug treatment center, boarding home, or adult family home and has income, the individual retains an amount equal to:

(a) The eligibility standard amount for the nonapplying spouse living in the home; and

(b) The eligibility standard or personal needs allowance the individual is eligible for based upon their living arrangement.

(3) An individual with countable income remaining after the allocation in subsection (2)(a) and (b) of this section is not eligible for medical care services (MCS).

NEW SECTION

WAC 182-509-0135 MCS income—Allocating income of an ineligible spouse to a medical care services (MCS) client. This section applies to medical care services (MCS). When an individual is married and lives with the nonapplying spouse, the following income is available to the individual:

(1) The remainder of the individual's wages, retirement benefits or separate property after reducing the income by:

(a) The MCS earned income work incentive deduction as specified in WAC 182-509-0175; and

(b) An amount not to exceed the ordered amount paid for court or administratively ordered current or back support for legal dependents living outside the home.

(2) The remainder of the nonapplying spouse's wages, retirement benefits and separate property after reducing the income by:

(a) An amount not to exceed the ordered amount paid for court or administratively ordered current or back support for legal dependents living outside the home, when the order is a separate order from the applying individual's order; and

(b) The one-person eligibility standard amount as specified under WAC 182-508-0230 which includes ineligible assistance unit members.

(3) One-half of all other community income, as provided in WAC 182-509-0005.

NEW SECTION

WAC 182-509-0155 MCS income—Exemption from sponsor deeming for medical care services (MCS). This section applies to medical care services (MCS).

(1) An individual who meets any of the following conditions is permanently exempt from deeming and none of a sponsor's income or resources are counted when determining eligibility for MCS:

(a) The Immigration and Nationality Act (INA) does not require the individual to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with United States Citizenship and Immigration Services (USCIS):

- (i) Refugee;
- (ii) Parolee;
- (iii) Asylee;
- (iv) Cuban/Haitian entrant; or
- (v) Special immigrant from Iraq or Afghanistan.

(b) The sponsor is an organization or group as opposed to an individual;

(c) The individual does not meet the alien status requirements to be eligible for benefits under WAC 182-503-0532;

(d) The individual has worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. If the individual worked during a quarter in which

they received TANF, Basic Food, SSI, CHIP, or nonemergency medicaid benefits, a quarter of work is not counted towards the forty quarters. A quarter of work by the following people is also counted toward the forty qualifying quarters:

(i) The individual;

(ii) The individual's parents for the time they worked before the individual turned eighteen years old (including the time they worked before the individual was born); and

(iii) The individual's spouse if still married or if the spouse is deceased.

(e) The individual becomes a United States (U.S.) citizen;

(f) The individual's sponsor is dead; or

(g) If USCIS or a court decides that the individual, their child, or their parent was a victim of domestic violence from the sponsor and:

(i) The individual no longer lives with the sponsor; and

(ii) Leaving the sponsor caused the need for benefits.

(2) While the individual is in the same assistance unit (AU) as their sponsor, they are exempt from the deeming process. An individual is also exempt from the deeming process if:

(a) The sponsor signed the affidavit of support more than five years ago;

(b) The sponsor becomes permanently incapacitated; or

(c) The individual is a qualified alien according to WAC 388-424-0001 and:

(i) Is on active duty with the U.S. armed forces or the individual is the spouse or unmarried dependent child of someone on active duty;

(ii) Is an honorably discharged veteran of the U.S. armed forces or the individual is the spouse or unmarried dependent child of an honorably discharged veteran;

(iii) Was employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or

(iv) Is a victim of domestic violence and the individual has petitioned for legal status under the Violence Against Women Act.

(3) If the individual, their child, or their parent was a victim of domestic violence, the individual is exempt from the deeming process for twelve months if:

(a) The individual no longer lives with the person who committed the violence; and

(b) Leaving this person caused the need for benefits.

(4) If the AU has income at or below one hundred thirty percent of the federal poverty level (FPL), the individual is exempt from the deeming process for twelve months. This is called the "indigence exemption." For this rule, the following is counted as income to the AU:

(a) Earned and unearned income the AU receives from any source; and

(b) Any noncash items of value such as free rent, commodities, goods, or services that are received from an individual or organization.

(5) If the individual chooses to use the indigence exemption, and is eligible for a state program, this information is not reported to the United States Attorney General.

(6) If the individual chooses not to use the indigence exemption:

- (a) The individual could be found ineligible for benefits for not verifying the income and resources of the sponsor; or
- (b) The individual will be subject to regular deeming rules under this section.

NEW SECTION

WAC 182-509-0165 MCS income—Income calculation. This section applies to medical care services (MCS).

(1) Countable income is all income that is available to the assistance unit (AU) after the following is subtracted:

- (a) Excluded or disregarded income under WAC 182-509-0015;
- (b) The earned income work incentive deduction under WAC 182-509-0175;
- (c) Income that is allocated to someone outside of the AU under WAC 182-509-0110 through 182-509-0135.

(2) Countable income includes all income that must be counted because it is deemed or allocated from financially responsible persons who are not members of the AU under WAC 182-509-0110 through 182-509-0165.

(3) Countable income is compared to the eligibility standards under WAC 182-508-0230.

(4) If countable income available to the AU is equal to or greater than the eligibility standard, the individual is not eligible for medical care services (MCS).

NEW SECTION

WAC 182-509-0175 MCS income—Earned income work incentive deduction. This section applies to medical care services (MCS).

(1) When determining eligibility for MCS, the agency or the agency's designee allows an earned income work incentive deduction of fifty percent of an individual's gross earned income.

(2) This deduction is used to reduce countable income before comparing the income to the eligibility standard for the program.

NEW SECTION

WAC 182-509-0200 MCS resources—How resources affect eligibility for medical care services (MCS). This section applies to medical care services (MCS).

(1) The following definitions apply to this chapter:

- (a) **"Equity value"** means the fair market value (FMV) minus any amount you owe on the resource.
- (b) **"Community property"** means a resource in the name of the husband, wife, or both.
- (c) **"Separate property"** means a resource of a married person that one of the spouses:
 - (i) Had possession of and paid for before they were married;
 - (ii) Acquired and paid for entirely out of income from separate property; or
 - (iii) Received as a gift or inheritance.

(2) A resource is counted towards the resource limit described in subsection (6) of this section when:

(a) It is a resource that must be counted under WAC 182-509-0205;

(b) The individual owns the resource. Ownership means:

- (i) The individual's name is on the title to the property; or
- (ii) The individual has property that doesn't have a title; and

(c) The individual has control over the resource, which means the resource is actually available to the individual; and

(d) The individual could legally sell the resource or convert it into cash within twenty days.

(3) The individual must try to make their resources available even if it will take more than twenty days to do so, unless:

- (a) There is a legal barrier; or
- (b) A court must be petitioned to release part or all of a resource.

(4) Resources are counted as of the date of application for MCS coverage.

(5) If total countable resources are over the resource limit in subsection (6) of this section, the individual is not eligible for MCS.

(6) Countable resources must be below the standards listed below based on the equity value of all countable resources.

(a) Applicants can have countable resources up to one thousand dollars.

(b) Recipients can have an additional three thousand dollars in a savings account.

(7) If the individual owns a countable resource with someone who is not included in the assistance unit (AU), only the portion of the resource that is owned by the individual is counted. If ownership of the funds cannot be determined, an equal portion of the resource is presumed to be owned by the individual and all other joint owners.

(8) It is assumed an individual has control of community property and is legally able to sell the property or convert it to cash unless evidence is provided to show the individual does not have control of the property.

(9) An item may not be considered separate property if the individual used both separate and community funds to buy or improve it.

(10) The resources of victims of family violence are not counted when:

(a) The resource is owned jointly with member of the former household;

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the individual at risk of harm.

(11) An individual may provide proof about a resource anytime, including when asked for proof by the agency or the agency's designee, or if the individual disagrees with a decision made about:

- (a) Who owns a resource;
- (b) Who has legal control of the resource;
- (c) The value of a resource;
- (d) The availability of a resource; or
- (e) The portion of a property owned by the individual or another person(s).

(12) Resources of certain people who live in the home with the individual are countable, even if they are not getting assistance. Resources that count toward the resource limit in subsection (6) of this section include the resources of ineligible or financially responsible people as defined in WAC 182-509-0100.

NEW SECTION

WAC 182-509-0205 MCS resources—How resources count toward the resource limits for medical care services (MCS). This section applies to medical care services (MCS).

(1) The following resources count toward the resource limit described in WAC 182-509-0200:

(a) Liquid resources not specifically excluded in subsection (2) of this section. These are resources that are easily changed into cash. Some examples of liquid resources are:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;
- (iv) Available retirement funds or pension benefits, less any withdrawal penalty;
- (v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (vi) Available trusts or trust accounts;
- (vii) Lump sum payments as described in chapter 388-455 WAC; or

(viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(e) Any real property like a home, land, or buildings not specifically excluded in subsection (3) of this section.

(f) The equity value of vehicles as described in WAC 182-509-0210.

(g) Personal property that is not:

- (i) A household good;
- (ii) Needed for self-employment; or
- (iii) Of "great sentimental value," due to personal attachment or hobby interest.

(h) Resources of a sponsor as described in WAC 388-470-0060.

(i) Sales contracts.

(2) The following types of liquid resources are not counted toward the resource limit described in WAC 182-509-0200 when determining eligibility for MCS:

- (a) Bona fide loans, including student loans;
- (b) Basic food benefits;
- (c) Income tax refunds for twelve months from the date of receipt;
- (d) Earned income tax credit (EITC) in the month received and for up to twelve months;

(e) Advance earned income tax credit payments;

(f) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(g) Individual development accounts (IDAs) established under RCW 74.08A.220;

(h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;

(i) Underpayments received under chapter 388-410 WAC;

(j) Educational benefits that are excluded as income under WAC 182-509-0035;

(k) The income and resources of an SSI recipient;

(l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

(m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;

(n) Adoption support payments;

(o) Self-employment accounts receivable that the individual has billed to the customer but has been unable to collect;

(p) Resources specifically excluded by federal law; and

(q) Receipts from exercising federally protected rights or extracted exempt resources (fishing, shell fishing, timber sales, etc.) during the month of receipt for a member of a federally recognized tribe.

(3) The following types of real property are not counted when determining eligibility for MCS coverage:

(a) A home where the individual, their spouse, or their dependents live, including the surrounding property;

(b) A house the individual does not live in but plans to return to, and the individual is out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty.

(c) Property that:

(i) The individual is making a good faith effort to sell;

(ii) The individual intends to build a home on, if they do not already own a home;

(iii) Produces income consistent with its fair market value (FMV), even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If the individual deposits excluded liquid resources into a bank account with countable liquid resources, the excluded liquid resources are not counted for six months from the date of deposit.

(5) If the individual sells their home, the individual has ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If the individual does not reinvest within ninety days, the agency or the agency's designee will determine whether

there is good cause to allow more time. Some examples of good cause are:

- (i) Closing on a new home is taking longer than anticipated;
 - (ii) The individual is unable to find a new home that is affordable;
 - (iii) Someone in the household is receiving emergent medical care; or
 - (iv) The individual has children or dependents that are in school and moving would require them to change schools.
- (b) If good cause is determined, more time will be allowed based on the individual's circumstances.
- (c) If good cause is not determined, the money received from the sale of the home is considered a countable resource.

NEW SECTION

WAC 182-509-0210 MCS resources—How vehicles count toward the resource limit for medical care services (MCS). This rule applies to medical care services (MCS).

- (1) A vehicle is any device for carrying persons and objects by land, water, or air.
- (2) The entire value of a licensed vehicle needed to transport a physically disabled assistance unit (AU) member is excluded.
- (3) The equity value of one vehicle up to five thousand dollars is excluded when the vehicle is used by the AU or household as a means of transportation.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-538-063 ((GAU)) MCS clients residing in a designated mandatory managed care plan county. (1) In Laws of 2007, chapter 522, section 209 (13) and (14), the legislature authorized the department to provide coverage of certain medical and mental health benefits to clients who:

- (a) ~~((Receive))~~ Are eligible for medical care services (MCS) under ~~((the general assistance unemployable (GAU) program))~~ WAC 182-508-0005; and
 - (b) Reside in a county designated by the ~~((department))~~ agency as a mandatory managed care plan county.
- (2) The only sections of chapter ~~((388-538))~~ 182-538 WAC that apply to ~~((GAU))~~ MCS clients described in this section are incorporated by reference into this section.
- (3) ~~((GAU))~~ MCS clients who reside in a county designated by the department as a mandatory managed care plan county must enroll in a managed care plan as required by WAC ~~((388-505-0110(7)))~~ 182-508-0001 to receive ~~((department paid))~~ agency-paid medical care. ~~((A-GAU))~~ An MCS client enrolled in an MCO plan under this section is defined as ~~((a-GAU))~~ an MCS enrollee.
- (4) ~~((GAU))~~ MCS clients are exempt from mandatory enrollment in managed care if they are American Indian or Alaska Native (AI/AN) and meet the provisions of 25 U.S.C. 1603 (c)-(d) for federally recognized tribal members and their descendants.

(5) The ~~((department))~~ agency exempts ~~((a-GAU))~~ an MCS client from mandatory enrollment in managed care:

- (a) If the ~~((GAU))~~ MCS client resides in a county that is not designated by the ~~((department))~~ agency as a mandatory MCO plan county; or
- (b) In accordance with WAC ~~((388-538-130))~~ 182-538-130(3).
- (6) The ~~((department))~~ agency ends ~~((a-GAU))~~ an MCS enrollee's enrollment in managed care in accordance with WAC ~~((388-538-130))~~ 182-538-130(4).
- (7) On a case-by-case basis, the ~~((department))~~ agency may grant ~~((a-GAU))~~ an MCS client's request for exemption from managed care or ~~((a-GAU))~~ an MCS enrollee's request to end enrollment when, in the ~~((department's))~~ agency's judgment:
 - (a) The client or enrollee has a documented and verifiable medical condition; and
 - (b) Enrollment in managed care could cause an interruption of treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.
- (8) The ~~((department))~~ agency enrolls ~~((GAU))~~ MCS clients in managed care effective on the earliest possible date, given the requirements of the enrollment system. The ~~((department))~~ agency does not enroll clients in managed care on a retroactive basis.
- (9) Managed care organizations (MCOs) that contract with the ~~((department))~~ agency to provide services to ~~((GAU))~~ MCS clients must meet the qualifications and requirements in WAC ~~((388-538-067))~~ 182-538-067 and ~~((388-538-095))~~ 182-538-095 (3)(a), (b), (c), and (d).
- (10) The ~~((department))~~ agency pays MCOs capitated premiums for ~~((GAU))~~ MCS enrollees based on legislative allocations for the ~~((GAU))~~ MCS program.
- (11) ~~((GAU))~~ MCS enrollees are eligible for the scope of care as described in WAC ~~((388-501-0060))~~ 182-501-0060 for medical care services (MCS) programs.
 - (a) ~~((A-GAU))~~ An MCS enrollee is entitled to timely access to medically necessary services as defined in WAC ~~((388-500-0005))~~ 182-500-0070;
 - (b) MCOs cover the services included in the managed care contract for ~~((GAU))~~ MCS enrollees. MCOs may, at their discretion, cover services not required under the MCO's contract for ~~((GAU))~~ MCS enrollees;
 - (c) The ~~((department))~~ agency pays providers on a fee-for-service basis for the medically necessary, covered medical care services not covered under the MCO's contract for ~~((GAU))~~ MCS enrollees;
 - (d) ~~((A-GAU))~~ An MCS enrollee may obtain:
 - (i) Emergency services in accordance with WAC ~~((388-538-100))~~ 182-538-100; and
 - (ii) Mental health services in accordance with this section.
- (12) The ~~((department))~~ agency does not pay providers on a fee-for-service basis for services covered under the MCO's contract for ~~((GAU))~~ MCS enrollees, even if the MCO has not paid for the service, regardless of the reason. The MCO is solely responsible for payment of MCO-contracted healthcare services that are:
 - (a) Provided by an MCO-contracted provider; or
 - (b) Authorized by the MCO and provided by nonparticipating providers.

(13) The following services are not covered for ~~((GAU))~~ MCS enrollees unless the MCO chooses to cover these services at no additional cost to the ~~((department))~~ agency:

- (a) Services that are not medically necessary;
- (b) Services not included in the medical care services scope of care, unless otherwise specified in this section;
- (c) Services, other than a screening exam as described in WAC ~~((388-538-100))~~ 182-538-100(3), received in a hospital emergency department for nonemergency medical conditions; and
- (d) Services received from a nonparticipating provider requiring prior authorization from the MCO that were not authorized by the MCO.

(14) A provider may bill ~~((a-GAU))~~ an MCS enrollee for noncovered services described in subsection (12) of this section, if the requirements of WAC ~~((388-502-0160))~~ 182-502-0160 and ~~((388-538-095))~~ 182-538-095(5) are met.

(15) Mental health services and care coordination are available to ~~((GAU))~~ MCS enrollees on a limited basis, subject to available funding from the legislature and an appropriate delivery system.

(16) A care coordinator (a person employed by the MCO or one of the MCO's subcontractors) provides care coordination to ~~((a-GAU))~~ an MCS enrollee in order to improve access to mental health services. Care coordination may include brief, evidenced-based mental health services.

(17) To ensure ~~((a-GAU))~~ an MCS enrollee receives appropriate mental health services and care coordination, the ~~((department))~~ agency requires the enrollee to complete at least one of the following assessments:

- (a) A physical evaluation;
- (b) A psychological evaluation;
- (c) A mental health assessment completed through the client's local community mental health agency (CMHA) and/or other mental health agencies;
- (d) A brief evaluation completed through the appropriate care coordinator located at a participating community health center (CHC);
- (e) An evaluation by the client's primary care provider (PCP); or
- (f) An evaluation completed by medical staff during an emergency room visit.

(18) ~~((A-GAU))~~ An MCS enrollee who is screened positive for a mental health condition after completing one or more of the assessments described in subsection (17) of this section may receive one of the following levels of care:

- (a) **Level 1.** Care provided by a care coordinator when it is determined that the ~~((GAU))~~ MCS enrollee does not require Level 2 services. The care coordinator will provide the following, as determined appropriate and available:
 - (i) Evidenced-based behavioral health services and care coordination to facilitate receipt of other needed services.
 - (ii) Coordination with the PCP to provide medication management.
 - (iii) Referrals to other services as needed.
 - (iv) Coordination with consulting psychiatrist as necessary.

(b) **Level 2.** Care provided by a contracted provider when it is determined that the ~~((GAU))~~ MCS enrollee requires services beyond Level 1 services. A care coordinator

refers the ~~((GAU))~~ MCS enrollee to the appropriate provider for services:

- (i) A regional support network (RSN) contracted provider; or
 - (ii) A contractor-designated entity.
- (19) Billing and reporting requirements and payment amounts for mental health services and care coordination provided to ~~((GAU))~~ MCS enrollees are described in the contract between the MCO and the ~~((department))~~ agency.
- (20) The total amount the ~~((department))~~ agency pays in any biennium for services provided pursuant to this section cannot exceed the amount appropriated by the legislature for that biennium. The ~~((department))~~ agency has the authority to take whatever actions necessary to ensure the ~~((department))~~ agency stays within the appropriation.

(21) Nothing in this section shall be construed as creating a legal entitlement to any ~~((GAU))~~ MCS client for the receipt of any medical or mental health service by or through the ~~((department))~~ agency.

(22) An MCO may refer enrollees to the ~~((department's))~~ agency's patient review and coordination (PRC) program according to WAC ~~((388-501-0135))~~ 182-501-0135.

(23) The grievance and appeal process found in WAC ~~((388-538-110))~~ 182-538-110 applies to ~~((GAU))~~ MCS enrollees described in this section.

(24) The hearing process found in chapter ~~((388-02))~~ 182-526 WAC and WAC ~~((388-538-112))~~ 182-538-112 applies to ~~((GAU))~~ MCS enrollees described in this section.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-556-0500	Medical care services under state-administered cash programs.
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AMENDATORY SECTION (Amending WSR 09-06-029, filed 2/24/09, effective 3/27/09)

WAC 388-505-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by medicaid. (1) Individuals admitted to Eastern or Western State Hospital for inpatient psychiatric treatment may qualify for categorically needy (CN) medicaid coverage and ~~((general assistance (GA)))~~ aged, blind, disabled (ABD) cash benefits to cover their personal needs allowance (PNA).

(2) To be eligible under this program, individuals must:

- (a) Be eighteen through twenty years of age or sixty-five years of age or older;
- (b) Meet institutional status under WAC 388-513-1320;
- (c) Be involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW;
- (d) Meet the general eligibility requirements for the ~~((GA))~~ ABD cash program as described in WAC ~~((388-400-0025))~~ 388-400-0060;
- (e) Have countable income below the payment standard described in WAC 388-478-0040; and
- (f) Have countable resources below one thousand dollars. Individuals eligible under the provisions of this section

may not apply excess resources towards the cost of care to become eligible. An individual with resources over the standard is not eligible for assistance under this section.

(3) ((GA)) ABD clients who receive active psychiatric treatment in Eastern or Western State Hospital at the time of their twenty-first birthday continue to be eligible for medic-aid coverage until the date they are discharged from the facility or until their twenty-second birthday, whichever occurs first.

NEW SECTION

The following section of the Washington Administrative Code is decodified as follows:

Old WAC Number	New WAC Number
388-505-0270	182-514-0270

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-505-0110	Medical assistance coverage for adults not covered under family medical programs.
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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-800-0020	What detoxification services will the department pay for?
WAC 388-800-0025	What information does the department use to decide if I am eligible for the detoxification program?
WAC 388-800-0030	Who is eligible for detoxification services?
WAC 388-800-0035	How long am I eligible to receive detoxification services?
WAC 388-800-0048	Who is eligible for ADATSA?
WAC 388-800-0110	What cash benefits am I eligible for through ADATSA if I am in residential treatment?
WAC 388-800-0115	What cash benefits can I receive through ADATSA if I am in outpatient treatment?
WAC 388-800-0130	What are ADATSA shelter services?
WAC 388-800-0135	When am I eligible for ADATSA shelter services?

WAC 388-800-0140	What incapacity criteria must I meet to be eligible for ADATSA shelter services?
WAC 388-800-0145	How does the department review my eligibility for ADATSA shelter services?
WAC 388-800-0150	Who is my protective payee?
WAC 388-800-0155	What are the responsibilities of my protective payee?
WAC 388-800-0160	What are the responsibilities of an intensive protective payee?
WAC 388-800-0165	What happens if my relationship with my protective payee ends?

WSR 12-12-073

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed June 6, 2012, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-09-031.

Title of Rule and Other Identifying Information: Chapter 308-110 WAC, Administration of knowledge and skills testing by driver training schools and WAC 308-108-100 Place of business—Classroom space.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on July 10, 2012, at 3:00 p.m.

Date of Intended Adoption: July 11, 2012.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by July 9, 2012.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by July 9, 2012, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To create guidelines for driver training schools (DTS) to administer knowledge and driving examinations. By creating rules there will be a clear understanding of the requirements to administer examinations. This will establish procedures to be in compliance with the terms of the agreements between department of licensing (DOL) and DTS. The anticipated effect will be that wait times in the LSOs will be reduced and provide customers the flexibility to obtain a license examination at a DTS.

Creates new chapter 308-110 WAC to define terms, set requirements for the establishment of agreements to administer knowledge and skills tests, set standards for the administration of examinations and examiners, set record-keeping requirements, provides for inspections and audits, and imposes sanctions for violations. Makes a conforming amendment related to classroom use in WAC 308-108-100 and clarifies language in that section.

Reasons Supporting Proposal: Required by RCW 46.82.450(2).

Statutory Authority for Adoption: RCW 46.01.110, 46.82.450.

Statute Being Implemented: RCW 46.82.450.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

June 6, 2012

Damon Monroe

Rules Coordinator

Chapter 308-110 WAC

Administration of Knowledge and Skills Testing by Driver Training Schools

NEW SECTION

WAC 308-110-010 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "Agreement" means a written agreement entered into between the department and a school for the purposes of RCW 46.82.450.

(2) "Applicant" means a person taking an examination administered by an examiner to qualify for a Washington driver's license.

(3) "Examinations" mean the tests that meet the department's criteria to assess an applicant's knowledge and skills to operate a motor vehicle.

(4) "Examiner" means a driver training instructor licensed under chapter 46.82 RCW, who has been approved by the department as meeting department qualifications, education, and training standards for administering examinations.

(5) "Knowledge test" means a written or electronically delivered test that measures the applicant's knowledge of traffic laws and ability to safely operate a motor vehicle.

(6) "School" means a driver training school licensed under chapter 46.82 RCW.

(7) "Skills test" means a demonstration of behind-the-wheel driving that measures the applicant's ability to safely operate a motor vehicle on the roadways without endangering the public or property.

NEW SECTION

WAC 308-110-020 Agreements—Establishment—Requirements. The department may enter into an agreement to conduct examinations with a school that:

(1) Is currently licensed under chapter 46.82 RCW to provide driver training instruction;

(2) Complies with chapters 18.235 and 46.82 RCW and regulations adopted under those chapters;

(3) Has submitted a request to enter into an agreement on a form or in a format prescribed by the department; and

(4) Has provided to the department:

(a) A list of examiners the school intends to use to administer examinations;

(b) A description of the school's examination practices that includes, but may not be limited to, a school's skills test route(s) and test starting point(s);

(c) A summary of the school's schedule for administering examinations;

(d) A school's knowledge test questions; and

(e) Any other information as may be required by the department.

NEW SECTION

WAC 308-110-030 Administration of examinations.

(1) Schools and examiners must conduct skills tests using routes that meet department standards.

(2) Knowledge test questions must be supplied by the department or meet department criteria.

(3) Knowledge tests must be conducted in an area separate from classroom instruction or when a class is not in session, minimizing distractions or interactions.

(4) Examinations must be conducted by examiners.

(5) Knowledge test results may be used to obtain a driver license for no more than two years from the date of completion.

(6) Skills test results may be used to obtain a driver license for no more than one year from the date of completion.

(7) In accordance with the department's guidelines, schools must refer to the department for testing any applicant who has a condition that may impair their ability to operate a motor vehicle safely.

(8) Prior to administering the knowledge and skills tests, schools must ensure that applicants are at least fifteen years of age. When the applicant is less than eighteen years of age, the applicant must have successfully completed a traffic safety education course.

(9) Prior to administering the skills test, schools will ensure that applicants are properly informed regarding testing requirements and their test results. Schools must also inform applicants of the school's current retesting, refund, and grievance policies and procedures.

(10) Applicants must possess one of the following to participate in the skills testing portion of the examination:

(a) A Washington instruction permit issued under RCW 46.20.055;

(b) A temporary authorization to drive issued on a form prescribed by the department; or

(c) A valid foreign driver's license.

NEW SECTION

WAC 308-110-040 Applicant records, recordkeeping and reporting. (1) Schools must keep applicant records for at least three years. Applicant records must be kept at a school's primary place of business. Records must be immediately available for inspection or audit by the department or its representative.

(2) Schools must keep applicant records on a form or in a format approved by the department. The form must include at least the:

- (a) Applicant name, date of birth, and driver's license or instruction permit number;
- (b) Knowledge and skill test results;
- (c) Examiner's name(s), instructor license number(s), and signature(s);
- (d) Dates and times the examinations were administered to the applicant; and
- (e) Other information required by the department.

(3) Schools must submit to the department the knowledge and skills test results for each applicant in accordance with the school's agreement with the department.

(4) The department will monitor outcomes for applicants who take a driver's license examination and will make aggregate outcomes available to the public.

NEW SECTION

WAC 308-110-050 Inspection and audit. The department or its representative may conduct examinations, inspections, and audits of school and applicant records, facilities, and operations at any time during regular business hours in order to ensure compliance with the requirements of chapter 46.82 RCW, the rules promulgated under this chapter, and the agreement.

NEW SECTION

WAC 308-110-060 Violations—Impact on agreement. (1) Schools and examiners are responsible for complying with the requirements of chapters 46.82 and 18.235 RCW and the rules promulgated under those chapters.

(2) If the department finds that an examiner or school has violated or no longer meets the qualifications or requirements of chapters 46.82 and 18.235 RCW, the rules promulgated under those chapters, or the agreement; the department may either (a) rescind approval of an examiner to conduct examinations, (b) terminate or suspend for any period of time an agreement with a school, or both.

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06, effective 1/19/07 [1/18/07])

WAC 308-108-100 Place of business—Classroom space. (1) The place of business of a driver training school must:

- (a) ~~((Shall))~~ Not be established nor any business of a driver training school conducted or solicited within one thousand feet of an office building owned or leased by the department of licensing in which examinations for driver's licenses are conducted. The distance of one thousand feet shall be

measured along the public streets by the nearest route from the place of business to such building. If the department establishes an office in which examinations for driver's licenses are conducted within one thousand feet of a driver training school's existing location, the driver training school may continue operations in such location until there is a change in school ownership, or the license to operate is not renewed or is suspended or revoked for cause.

(b) ~~((Shall))~~ Be regularly occupied and used exclusively for the business of giving driver instruction, except for purposes of administering examinations as may be permitted under chapter 308-110 WAC. Regularly occupied means that the public and the department can expect to make contact with the school owner or its staff or instructors at the main office during its business hours; and

(c) ~~((Shall))~~ Meet all applicable requirements of chapter 46.82 RCW.

(2) A driver training school's classroom space ~~((shall))~~ must:

(a) Provide sufficient seating and table or desk space for all students enrolled in each class;

(b) Be properly equipped with all other equipment necessary for student training and instruction purposes; and

(c) ~~((Use))~~ Be separated from the business office by using walls, partitions, or ~~((separate))~~ alternate scheduling ~~((of classroom and office activities if the classroom shares a single space with the driver training school office in order to mitigate student distraction or disruption of the instruction))~~ when a school must use one space for both activities.

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

WSR 12-12-074**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed June 6, 2012, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-062.

Title of Rule and Other Identifying Information: The community services division (CSD) is proposing to amend WAC 388-444-0030 Do I have to work to be eligible for Basic Food benefits if I am an able-bodied adult without dependents (ABAWD)?

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 July 10, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 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 98503, e-mail

DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 10, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 26, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-444-0030 to extend the suspension of eligibility time limits and work requirements for ABAWD applying for or receiving food assistance under Basic Food or the state-funded food assistance program (FAP) to September 30, 2013. The current ABAWD waiver is due to expire September 30, 2012.

Reasons Supporting Proposal: Washington state received notification from the United States Department of Agriculture Food and Nutrition Service (FNS) it is one of forty-six states that meet the criteria for extended unemployment benefits as determined by the United States Department of Labor's Unemployment Insurance Service. As a result, FNS has approved a statewide waiver of the supplemental nutrition assistance program (SNAP) ABAWD time-limits and work requirements through at least September 30, 2013. This rule filing is needed to reflect the new expiration date in state code.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.-050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.24.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects certain DSHS clients who receive food assistance under Basic Food and FAP by extending the suspension of eligibility time limits and work requirements.

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."

June 4, 2012

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-18-039, filed 8/31/11, effective 10/1/11)

WAC 388-444-0030 Do I have to work to be eligible for Basic Food benefits if I am an able-bodied adult without dependents (ABAWD)? (1) An able-bodied adult without dependents (ABAWD) is a person who:

- (a) Is physically and mentally able to work;
- (b) Is age eighteen through forty-nine; and
- (c) Has no child in the household.

(2) If you are an ABAWD, you must participate in employment and training activities under subsection (4) unless you are exempt from ABAWD requirements under WAC 388-444-0035.

(3) Nonexempt ABAWDs who fail to participate may continue to receive food assistance until September 30, ~~((2012))~~ 2013.

(4) Beginning October 1, ~~((2012))~~ 2013, an ABAWD is not eligible to receive food assistance for more than three full months in a thirty-six month period, except as provided in WAC 388-444-0035, unless that person:

(a) Is exempt from ABAWD requirements under WAC 388-444-0035;

(b) Works at least twenty hours a week averaged monthly;

(c) Participates in on the job training (OJT), which may include paid work and classroom training time, for at least twenty hours a week;

(d) Participates in an unpaid work program as provided in WAC 388-444-0040; or

(e) Participates in and meets the requirements of one of the following work programs:

(i) The Job Training Partnership Act (JTPA);

(ii) Section 236 of the Trade Act of 1974; or

(iii) A state-approved employment and training program.

WSR 12-12-075

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 6, 2012, 9:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-24-094 and 12-01-119.

Title of Rule and Other Identifying Information: WAC 388-106-0300, 388-106-0305 and 388-106-0815, adult day health.

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 July 10, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 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 July 10, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 26, 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 chapter 388-106 WAC, Long-term care services. Amendments are necessary to implement adult day health changes as required under 3ESHB 2127 (2012 supplemental budget).

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

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: Debbie Johnson, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2531.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt, per RCW 34.05.328 (5)(b)(v), as rules are explicitly and specifically dictated by statute.

June 4, 2012

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-24-026, filed 11/28/07, effective 1/1/08)

WAC 388-106-0300 What services may I receive under community options program entry system (COPEs) when I live in my own home? When you live in your own home, you may be eligible to receive only the following services under COPEs:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service tasks in your own home, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;

(b) Are beyond the amount, duration or scope of medicare reimbursed home health services as described in WAC ((388-551-2120)) 182-551-2120 and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace medicare home health services.

(6)(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if:

(i) You live alone in your own home;

(ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or

(iii) No one in your home, including you, can secure help in an emergency.

(b) A medication reminder if you:

(i) Are eligible for a PERS unit;

(ii) Do not have a caregiver available to provide the service; and

(iii) Are able to use the reminder to take your medications.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of medicare-reimbursed home health services as provided under WAC ((388-551-2100)) 182-551-2100.

(8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:

(a) Medically necessary under WAC ((388-500-0005)) 182-500-0700;

(b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicare and/or medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(10) Transportation services, when the service:

(a) Provides access to community services and resources to meet your therapeutic goal;

(b) Is not diverting in nature; and

(c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community.

(11) Nurse delegation services, when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In non-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

(a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

(14) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility;

or
(F) Are not capable of participating safely in a group care setting.

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

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0305 What services may I receive under COPEs if I live in a residential facility? If you live in one of the following residential facilities: A licensed boarding home contracted with the department to provide assisted living, enhanced adult residential care, enhanced adult residential care-specialized dementia care or an adult family home, you may be eligible to receive only the following services under COPEs:

(1) Personal care services as defined under WAC 388-106-0010.

(2) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, when the items are:

(a) Medically necessary under WAC 388-500-0005; and

(b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility.

(3) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(4) Transportation services, when the service:

(a) Provides access to community services and resources to meet a therapeutic goal;

(b) Is not diverting in nature;

(c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community; and

(d) Does not replace the services required by DSHS contract in residential facilities.

(5) Skilled nursing, when the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 388-551-2100; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).

(6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:

(a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

(8) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714, and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility;

or

(F) Are not capable of participating safely in a group care setting.

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

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0815 Am I eligible for adult day health? ~~((1) You are eligible for adult day health services if you meet all of the following criteria. You are:~~

~~(a) Age eighteen years or older;~~

~~(b) Enrolled in one of the following medical assistance programs:~~

~~(i) Categorically needy (CNP);~~

~~(ii) Categorically needy qualified medicare beneficiaries (CNP-QMB);~~

~~(iii) General assistance—Expedited medicaid disability (GA-X); or~~

~~(iv) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).~~

~~(e) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714; and~~

~~(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering; and~~

~~(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and~~

~~(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.~~

~~(d) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.~~

~~(2) You are not eligible for adult day health if you:~~

~~(a) Can independently perform or obtain the services provided at an adult day health center;~~

~~(b) Have referred care needs that:~~

~~(i) Exceed the scope of authorized services that the adult day health center is able to provide;~~

- (ii) ~~Do not need to be provided or supervised by a licensed nurse or therapist;~~
 (iii) ~~Can be met in a less structured care setting; or~~
 (iv) ~~In the case of skilled care needs, are being met by paid or unpaid caregivers.~~
 (e) ~~Live in a nursing home or other institutional facility;~~
 or
 (d) ~~Are not capable of participating safely in a group care setting.)~~ You are eligible for adult day health if you meet the conditions described in WAC 388-106-0300 or 388-106-0305.

WSR 12-12-077

PROPOSED RULES

SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 6, 2012, 10:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-09-004.

Title of Rule and Other Identifying Information: WAC 392-121-188 Instruction provided under contract.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on July 12, 2012, at 3:30 p.m.

Date of Intended Adoption: July 12, 2012.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by July 11, 2012.

Assistance for Persons with Disabilities: Contact Wanda Griffin by July 10, 2012, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 392-121-188 requires updating to align with purchasing individual on-line course[s] and the rule change already in place for WAC 392-121-182.

Reasons Supporting Proposal: The proposed changes will clarify the requirements for these emerging practices.

Statutory Authority for Adoption: RCW 28A.150.305.

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6181; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301.

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

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

June 6, 2012

Randy Dorn

State Superintendent

AMENDATORY SECTION (Amending WSR 09-06-038, filed 2/25/09, effective 3/28/09)

WAC 392-121-188 Instruction provided under contract. School districts have general authority to contract for the services of individuals to provide instruction, subject to applicable state and federal laws and local collective bargaining agreements. School districts also have authority to enter into interdistrict cooperative agreements for instructional services with other school districts under RCW 28A.225.250. However, when a school district contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the school district for state basic education funding, the requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the school district for state funding if the following requirements are met:

(1) The school district board of directors in accordance with RCW 28A.320.015 adopts a resolution that concludes it is in the best interest of the students to expand the options available by providing an appropriate basic education program pursuant to the contract and sets forth the rationale in support of the conclusion. A board adopted resolution is not required for on-line courses purchased by the school district from an on-line provider approved by the superintendent of public instruction under RCW 28A.250.020;

(2) The school district retains full responsibility for compliance with all state and federal laws;

(3) The contractor complies with all relevant state and federal laws that are applicable to the school district;

(4) The contractor provides instruction free of sectarian or religious influence or control((-);

(5) The contractor (~~((serves the students at no cost to))~~ charges the student (~~((for))~~ no tuition (~~((and fees and))~~ for enrollment;

(6) Enrollment is voluntary (~~((and no))~~);

(7) No student or person is unlawfully excluded from participation on the grounds of race, creed, color, national origin, sex, marital status, or presence of any sensory, mental, or physical handicap;

~~((6))~~ (8) Each student is enrolled in the school district reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;

~~((7))~~ (9) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section.

~~((8))~~ (10) The curriculum is approved by the district. District approval for on-line course curriculum is not required for on-line courses offered by an on-line provider

approved by the superintendent of public instruction under RCW 28A.250.020;

~~((9))~~ (11) The contractor provides enrollment reports to the school district that comply with this chapter;

~~((10))~~ (12) The contractor maintains and has available for audit or review by the school district, state, or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and financial data including all revenues and expenditures pertaining to the contract with the school district;

~~((11))~~ (13) If a certificated teacher employed by a contractor other than an institution of higher education ((at any time during the school year serves)) spends more than twenty-five ((students which equals more than one quarter of one)) percent ((.0025) of the district's annual average) of a full-time equivalent ((enrollment claimed for basic education funding the)) time with students for a given school district ((reports the certificated instructional employees of the contractor funded with any state moneys or federal moneys that flow through)) at any time during the school year, the school district must report the individual certificated teacher as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;

~~((12)) If the contract is with an entity other than an institution of higher education, for the students served pursuant to the contract, the contractor maintains a ratio of full-time equivalent certificated instructional staff serving the annual average full-time equivalent students reported for basic education funding pursuant to this section which is at least equal to the district's basic education funding ratio for the grade level of the students being reported for basic education funding pursuant to this section;~~

~~((13))~~ (14) The school district and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the school district. School districts that purchase on-line courses through the on-line course catalog provided by the office of superintendent of public instruction are exempt from this provision;

~~((14))~~ (15) The school district and contractor establish a process for periodic ~~((on-site))~~ monitoring by the school district for compliance with this section and other terms of the contract between the school district and contractor. School districts that purchase on-line courses through the on-line course catalog provided by the office of superintendent of public instruction are exempt from this provision;

~~((15))~~ (16) Contracts for services for students with disabilities shall comply with WAC 392-172A-04085 and 392-172A-04090;

~~((16))~~ (17) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment, which is governed by chapter 392-169 WAC or at-risk programs meeting the standards of subsection (18) of this section; and

~~((17)) When a school district contracts for an alternative learning experience program and the contractor exercises pri-~~

~~mary responsibility for the student's written learning plan, the program shall be for academically at risk students and shall comply with RCW 28A.150.305. Enrollment in these programs shall be reported pursuant to WAC 392-121-182.)~~

(18) Full-time equivalent enrollment reported for students served under contract with a community or technical college as defined in RCW 28B.50.030 shall be based on the credits generated by the student consistent with WAC 392-169-025 if the program meets the following standards:

(a) The student is earning credits applicable to a high school diploma.

(b) The program is focused on serving credit deficient students.

(c) The student population served is considered at-risk and meet the following criteria:

(i) The students have already dropped out of high school; or

(ii) The students have not demonstrated success in the traditional high school environment.

(19) The school district requires the contractor to clearly state in all of the contractor's advertising, publicity, or public statements regarding the contracted service that the service is being offered by the school district under contract.

WSR 12-12-079

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 6, 2012, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-09-003.

Title of Rule and Other Identifying Information: WAC 392-121-182 Alternative learning experience requirements.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on July 12, 2012, at 2:30 p.m.

Date of Intended Adoption: July 12, 2012.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by July 11, 2012.

Assistance for Persons with Disabilities: Contact Wanda Griffin by July 10, 2012, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 392-121-182 requires updating to clarify questions resulting from last year's rewrite of this WAC and address new requirements.

Reasons Supporting Proposal: This rule change updates the differential funding model to include the 2012-2013 school year, as required by the current state budget.

Definitions for "in-person instructional contact" and "school week" are added. The requirement to report student-teacher ratios and the requirement for alternative learning experience programs to certify their intent to provide minimum in-person instructional contact time has been removed.

Clarification is provided for the requirement of direct personal contact - adding options of in-person instructional and synchronous instructional contact to meet this requirement. The rule change also clarifies the language regarding adjusting monthly enrollment reporting when an intervention plan is not in place within five school days.

Statutory Authority for Adoption: RCW 28A.150.305.

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6181; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301.

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

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

June 6, 2012

Randy Dorn

State Superintendent

AMENDATORY SECTION (Amending WSR 11-17-147, filed 8/24/11, effective 9/1/11)

WAC 392-121-182 Alternative learning experience requirements. (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience, including an alternative learning experience on-line program as defined in RCW 28A.150.262. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means:

(A) A course or a set of courses developed by a certificated teacher and documented in an individual written student learning plan for any student who meets the definition for enrollment specified by WAC 392-121-106. A student may enroll part-time in an alternative learning experience.

Such enrollment is subject to the provisions of RCW 28A.150.350 and chapter 392-134 WAC; and

(B) The student pursues the requirements of the written student learning plan in whole or in part independently from a regular classroom setting or schedule, but the learning plan may include some components of direct instruction; and

(C) The student's learning is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(ii) The broad categories of alternative learning experience programs include, but are not limited to:

(A) On-line programs as defined in RCW 28A.150.262;

(B) Parent partnership programs that include significant participation and partnership by parents and families in the design and implementation of a student's learning experience; and

(C) Contract based learning programs.

(b) "Certificated teacher" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

(c) "Written student learning plan" means a written plan for learning that is developed and approved by a certificated teacher (~~(that)~~) and defines the requirements of an individual student's alternative learning experience. The written student learning plan must include at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) A description of how weekly direct personal contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or program. Courses must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course meets one or more of the state essential

academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district. For each high school alternative learning experience course, the written student learning plan must specify whether the course meets state and district graduation requirements.

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan(, and);

(ii) Must be related to an alternative learning experience course identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented(=);

(e) "Satisfactory progress" means a certificated teacher has determined that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory. The evaluation of satisfactory progress is conducted in a manner consistent with school district student evaluation or grading procedures, and is based on the professional judgment of a certificated teacher;

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of direct personal contact for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which direct personal contact is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participa-

tion fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(h) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive on-line, voice, or video communication technology(=). The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students.

(i) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(j) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students.

(k) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least one day when a district's schools are in session.

(4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan developed by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties.

(b) Each student enrolled in an alternative learning experience must have:

(i) Direct personal contact with a certificated teacher at least once a school week, until the student completes all course objectives or otherwise meets the requirements of the learning plan;

(ii) In-person instructional contact for at least one hour per school week; or

(iii) For students whose written student learning plan includes only on-line courses as defined by RCW 28A.250.-

010, synchronous digital instructional contact for at least one hour per school week.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher and the results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student.

(iii) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(iv) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student.

(v) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district.

(5) Required school district board policies for alternative learning experiences: The board of directors of a school district claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) responsible for overseeing the district's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

(6) Alternative learning experience implementation requirements:

(a) School districts that offer alternative learning experiences must ensure that they are accessible to all students, including students with disabilities. Alternative learning experiences for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experiences is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience program.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experiences must be consistent in quality with those available to the district's overall student population.

(g) Instructional materials used in alternative learning experiences must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience programs if the purchase is consistent with the district's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's regular instructional program. Items so purchased remain the property of the school district upon program completion.

(i) School districts are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's regular instructional program. This prohibition extends to a district's contracted providers of alternative learning experience programs, and each district shall be responsible for monitoring the compliance of its contracted providers. However, nothing in this subsection prohibits school districts from contracting with on-line providers pursuant to chapter 28A.250 RCW.

(j)(i) A school district that provides one or more alternative learning experiences to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction

pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district and made available for audit.

(ii) In the event a school district cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district or the school district contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

(n) State funded alternative learning experience on-line programs must be accredited by the Northwest Accreditation Commission or another national, regional, or state accreditation program listed by the office of superintendent of public instruction on its web site.

(o) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences. School districts enrolling such students in alternative learning experiences are subject to all school district duties and liabilities pertaining to such students for the full school year, including ensuring the student's compulsory attendance pursuant to chapter 28A.225 RCW, until such time as the student has actually enrolled in another school district, or has otherwise met the mandatory attendance requirements specified by RCW 28A.225.010.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) Alternative learning experience courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of educa-

tion's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(7) **Enrollment reporting procedures:** Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's (~~(prior month)~~) progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district in (~~(that month's)~~) the enrollment count for the month of the evaluation that showed the lack of satisfactory progress.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) School districts (~~(providing)~~) claiming alternative learning experiences (~~(to)~~) students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

(8) Differentiated funding: For the 2011-12 and 2012-13 school year, school districts reporting student enrollment pursuant to the requirements of this section shall generate and receive funding at eighty percent of the formula funding that would have been generated under the state basic education formula for such enrollment unless the following conditions are met, in which case school districts shall generate and receive funding at ninety percent of the formula funding:

(a) For alternative learning experience on-line programs under RCW 28A.150.262, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives either:

(i) Face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in (e) of this subsection; or

(ii) Synchronous digital instructional contact time from a certificated teacher according to the criteria identified in (e) of this subsection if the student's written student learning plan includes only on-line courses as defined by RCW 28A.250.-010.

(b) For all other types of alternative learning experience programs, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in (e) of this subsection;

(c) The instructional contact time must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan(~~(;~~

~~(d) The district certifies monthly); and~~

(ii) Related to (~~(the superintendent of public instruction that the)~~) an alternative learning experience (~~(program is designed and implemented)~~) course identified in (~~(a manner that will accomplish such contact requirements)~~) the written student learning plan;

~~((e))~~ (d) Using the estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan, as required in subsection (3)(c)(iii) of this section:

(i) For students whose learning plan includes an estimate of five hours per school week or less, on average at least fifteen minutes of contact per school week during each month of reported enrollment for the student;

(ii) For students whose learning plan includes an estimate of more than five hours per school week but less than sixteen hours per school week, on average at least thirty minutes of contact per school week during each month of reported enrollment for the student;

(iii) For students whose learning plan includes an estimate of more than fifteen hours per school week, on average at least one hour of contact per school week during each month of reported enrollment for the student.

(9) Assessment requirements:

(a) All students enrolled in alternative learning experiences must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident alternative learning experience schools, programs, or courses who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

(10) **Program evaluation requirements:** School districts offering alternative learning experiences must engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation must follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

(11) **Reporting requirements:**

(a) Each school district offering alternative learning experiences must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences as well as information about the resident and serving districts of such students.

(b) Each school district offering alternative learning experiences must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's regular instructional program.

(c) Each school district offering alternative learning experiences must report annually to the superintendent of public instruction on the types of programs and course offerings subject to this section. The annual report shall identify the ~~((ratio))~~ number of certificated instructional staff ~~((to))~~ full-time equivalent ~~((students enrolled in))~~ assigned to each alternative learning experience ~~((courses or))~~ program(s). The annual report shall separately identify alternative learning experience enrollment of students provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(12) **Documentation and record retention requirements:** School districts claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection (11) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of ~~((direct personal))~~ weekly contact required by subsection (4) of this section.

(i) Evidence of direct personal contact must include the date of the direct personal contact, the method of communication by which the direct personal contact was accomplished, and a summary of discussion.

(ii) For students receiving either in-person instructional contact time or synchronous digital instructional contact time, evidence may include classroom attendance records;

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state;

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section; and

(j) Evidence of face-to-face contact required in subsection (8)(a) of this section.

WSR 12-12-080

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed June 6, 2012, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-064.

Title of Rule and Other Identifying Information: Health and safety regulations, WAC 504-36-030 Spectator events—Safety rules.

Hearing Location(s): Lighty 401, WSU Pullman, Pullman, Washington, on July 12, 2012, at 4:00 p.m.

Date of Intended Adoption: August 24, 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 July 12, 2012.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by July 10, 2012.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the rules for spectator events and safety rules.

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: Sharyl Kammerzell, Director, Legal Affairs/Special Counsel to the President, French Administration 422, Pullman, Washington 99164-1048, (509) 335-4200; Implementation and Enforcement: Roger Patterson, Vice-President, Business and Finance, French Administration 442, Pullman, Washington 99164-1045, (509) 335-5524.

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.

June 6, 2012

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

AMENDATORY SECTION (Amending WSR 97-20-019, filed 9/19/97, effective 9/19/97)

WAC 504-36-030 Spectator events—Safety rules. (1)

Protection of the safety and general welfare of students, faculty and staff, performers and officials, and members of the general public attending or participating in spectator events on the campus is a primary concern of Washington State University.

(2) The following rules of conduct are applicable to all public events of Washington State University, including specifically, but not limited to, Martin Stadium and the ~~((Performing Arts))~~ Beasley Coliseum and to all public areas of the facility wherein the event is held (hereafter the "event site").

(a) Behavior which in the judgment of designated university officials constitutes a disruption of the event or safety hazard for other spectators or participants is prohibited.

(b) Possession and/or consumption of ~~((alcoholic beverages or))~~ illegal drugs is prohibited; possession and/or consumption of alcoholic beverages is permitted subject to restrictions.

(i) Any ~~((such materials))~~ illegal drugs or alcoholic beverages, except for such beverages provided in accordance with (b)(ii) of this subsection, found shall be delivered to the custody of designated university officials or their representatives upon request. In addition, violators of this ~~((rule))~~ section may be subject to university disciplinary action (if applicable) and/or legal proceedings, and to removal from the event site.

(ii) Alcoholic beverages may be possessed, sold, served, and consumed at event sites only under a valid permit or license issued by the Washington state liquor control board. Events at which alcoholic beverages are possessed, sold, served, and consumed must comply with the restrictions imposed by the Washington state liquor control board, have restricted attendance, and be limited to specified room(s) or area(s). Possession, consumption, service, dispensation, or sale of alcohol is prohibited except to persons of legal age.

(c) Except as provided in (b) of this subsection, possession of glass or metal beverage containers, or devices used for carrying such beverage containers, is prohibited ~~((Provided, That))~~; however, this ((rule)) section shall not apply to personal canteens or thermos bottles one liter or less in size, containing beverages not in violation of this ((rule)) section, and provided further, that this ((rule)) section shall not apply to small soft-sided articles used to carry such permitted containers, as more fully described in ((subpart)) (d) of this ((rule below)) subsection. All such items shall be subject to a visual inspection upon entry to the event site. Any containers or devices prohibited by this ~~((rule))~~ section shall be removed by the possessor or delivered to the custody of designated university officials or their representatives upon request. This ~~((rule))~~ section shall not apply to approved vendors.

(d) Knapsacks, duffel bags, backpacks, bags used to transport permitted beverage containers or other soft sided bags shall be small enough to fit completely under one seat, and shall be so kept at all times to maintain clear aisles, walkways and stairs. All such items are subject to a visual inspection upon entry into the event site. No hard sided bags, suit-

cases, coolers or other similar items shall be permitted into the event site.

(e) Aisles, walkways and stairs shall be kept clear of hazards and obstacles (including but not limited to those items discussed in ~~((subparts))~~ (c) and (d) of this ~~((rule))~~ subsection at all times, to ensure safe and easy passage for persons attending the event, university and security officials, and others at the event site.

(f) Possession of any fireworks, weapons, explosive devices or artificial noisemaking devices (such as airhorns) is prohibited in the event site. Any such items shall be surrendered to designated university officials upon request. In addition, possession of such items may subject violators of this ~~((rule))~~ section to university disciplinary action (if applicable) and/or legal proceedings, and to removal from the event site.

(g) Smoking is prohibited in areas designated as "no smoking."

(h) An individual is entitled to occupy only the seat for which he or she has the proper ticket.

(i) ~~((Video taping equipment))~~ Recording video of the event for commercial purposes is not permitted into the event site without written permission from the WSU athletic department.

(j) Umbrellas may not be opened or raised in seating areas of any event site, in order to ensure that all persons attending the event have as clear and unobstructed a view of the event as possible. Personal sized umbrellas may be brought into the event site and stored as described in ~~((subparts))~~ (d) and (e) of this ~~((rule))~~ subsection.

(3) Where there is reasonable cause to believe that persons are, or are attempting to, violate the requirements identified in WAC 504-36-030(2), such person or persons will be denied license or privilege to enter or remain in or upon the premises, and designated officials may take necessary action to deny entry or to remove such persons from the premises.

Failure to vacate the premises upon request of designated university officials may result in subsequent legal process under the laws of the state of Washington.

(4) For purposes of WAC 504-36-030 (1) and (2) designated officials include the president of the university, the vice president for business ~~((affairs))~~ and finance, and the following officials:

(a) Director of athletics or designee for athletic events;

(b) Director of the coliseum or designee for coliseum events;

(c) Director of the Compton Union Building or designee for events in the Compton Union Building;

(d) Director of the School of Music ~~((and Theatre Arts))~~ or designee for events sponsored by that school;

(e) The WSU executive director of public safety or designee;

(f) Officers of the WSU police department when (1) acting at the request of any of the above-named officials to enforce university regulations, or (2) enforcing state laws or local ordinances.