

WSR 12-14-012
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 21, 2012, 2:07 p.m., effective July 22, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-446-0020 What penalties will I receive if I break a food assistance rule on purpose?

The amendments to WAC 388-446-0020 are necessary to incorporate federal regulations regarding the allowable use of supplemental nutrition assistance program benefits. The amendments will provide penalty information to comply with 7 C.F.R. 273.16 for first, second and third convictions of crimes that are an intentional program violation for food assistance benefits.

Citation of Existing Rules Affected by this Order: Amending WAC 388-446-0020.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142.

Other Authority: 7 C.F.R. 273.16.

Adopted under notice filed as WSR 12-10-043 on April 27, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 19, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-19-047, filed 9/13/11, effective 10/14/11)

WAC 388-446-0020 What penalties will I receive if I break a food assistance rule on purpose? (1) Breaking a rule on purpose for food assistance is known as an intentional program violation (IPV) under WAC 388-446-0015. These rules apply to all DSHS food assistance programs including:

(a) Washington Basic Food program or Basic Food;
 (b) The Washington combined application project (WASHCAP) under chapter 388-492 WAC;

(c) Transitional food assistance (TFA) under chapter 388-489 WAC; and

(d) The state-funded food assistance program (FAP) for legal immigrants.

(2) You will have ~~((an IPV))~~ a disqualification period if we have shown that you have committed an IPV in any of the following three ways:

(a) We establish that you committed an IPV through an administrative disqualification hearing (ADH) under WAC 388-446-0015;

(b) You signed a disqualification consent agreement that waives your right to an administrative disqualification hearing and ~~((accepts))~~ states you accept the IPV penalty; or

(c) A federal, state or local court found that you committed an IPV or found you guilty of a crime that breaks food assistance rules.

~~(3) ((We only apply a disqualification penalty to the person or persons who have committed an IPV. People who commit an IPV are disqualified from all food assistance benefits listed in subsection (1) of this section. If you commit an IPV you will not be eligible for food assistance:~~

~~(a) For a period of twelve months for the first violation;~~

~~(b) For a period of twenty-four months for the second violation;~~

~~(c) Permanently for the third violation.~~

~~(4))~~ **Special penalties for certain crimes** - If you are convicted in a court of law for crimes that are an intentional program violation, we disqualify you for the period of time set in the court order. If the court order does not state a disqualification period, we set a disqualification period based on the crime you were convicted of committing:

(a) **Drugs** - If you are convicted in a federal, state, or local court of trading or receiving food benefits for a controlled substance, we disqualify you:

(i) For a period of twenty-four months for a first ~~((conviction))~~ offense; and

(ii) Permanently for a second ~~((violation))~~ offense.

(b) **Weapons** - If you are convicted in a federal, state or local court of trading your food assistance benefits for firearms, ammunition, or explosives, we permanently disqualify you from receiving food assistance on the first offense.

(c) **Trafficking** - If you are convicted in a federal, state, or local court of knowingly buying, selling, trading, or presenting for redemption food assistance benefits totaling five hundred dollars or more, we permanently disqualify you from receiving food assistance on the first offense.

(d) **False identification** - If you are ~~((convicted in a federal, state, or local court of providing))~~ found to have provided false identification to receive benefits in more than one assistance unit, we disqualify you from receiving food assistance;

~~(i) For ten years on the first offense,~~

~~(ii) Permanently for the third offense.~~

(e) **Receiving benefits in more than one state** - If you are ~~((convicted in a federal, state, or local court of providing))~~ found to have provided false residency information to receive benefits in more than one household or state, we disqualify you from receiving food assistance;

~~(i) For ten years on the first offense,~~

~~(ii) Permanently for the third offense.~~

~~((5) When we))~~ (4) In addition to penalties for crimes described in subsection (3), if you commit an IPV you will not be eligible for food assistance:

(a) For a period of twelve months for any first intentional program violation;

(b) For a period of twenty-four months for any second intentional program violation; and

(c) Permanently for any third intentional program violation.

(5) We only apply a disqualification penalty to the person or persons who have committed an intentional program violation.

(6) Start date of a disqualification. The date of a disqualification depends on how a person was disqualified. We will send you a letter telling you when your disqualification period will start:

(a) **ADH or consent agreement** - If you were found to have committed an IPV in an administrative disqualification hearing or you signed a consent agreement waiving this hearing and accepting the disqualification, we start the disqualification period by the second month after we sent you a letter informing you of the disqualification.

(b) **Conviction in court** - If you are convicted in court of a crime that is an intentional program violation, your disqualification period in subsection (4) is in addition to any civil or criminal penalties. We disqualify you from food assistance within forty-five days of the court order unless this timing conflicts with the court order.

~~((6))~~ **(7) Disqualifications apply in all states** - If you have an IPV disqualification this stays with you until the penalty period is over, even if you move to another state:

(a) If we disqualify you from food assistance, you are also disqualified from receiving supplemental nutrition assistance program (SNAP) benefits in another state during the disqualification period.

(b) If you are disqualified from receiving SNAP benefits for an IPV from another state, you can't receive food assistance in Washington during the disqualification period.

~~((7))~~ **(8)** Even though we only disqualify the persons who have committed an IPV from receiving food assistance benefits, all adults in the assistance unit are responsible to repay any benefits you were overpaid as described under WAC 388-410-0020 and 388-410-0025.

WSR 12-14-020

PERMANENT RULES

STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed June 22, 2012, 2:46 p.m., effective July 23, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The WAC proposed changes will result in two effects:

(1) The mandatory waiver of an eighty-five percent reduction from the standard per credit tuition and services activities fee charge will become a local option for each community and technical college. The individual college boards of trustees will have authority to determine whether or not to establish a waiver for parenting education classes. They will also have authority to set the rate of the waiver and eligibility requirements for students receiving the waiver.

(2) The waiver option will be expanded to all delivery modes for parenting education classes and not limited to a cooperative preschool model currently required in the WAC, to better meet community needs.

Citation of Existing Rules Affected by this Order: Amending WAC 131-28-026 Tuition charges for certain ungraded courses.

Statutory Authority for Adoption: RCW 28B.15.069.

Adopted under notice filed as WSR 12-10-037 on April 26, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 21, 2012.

Beth Gordon
Executive Assistant
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-14-070, filed 6/30/05, effective 7/31/05)

WAC 131-28-026 Tuition charges for certain ungraded courses. (1) The state board shall designate ungraded courses. These courses may be offered at tuition rates that differ from the standard rates set by WAC 131-28-025. Ungraded shall mean courses not categorized by level of instruction and may be assigned degree credit or letter grades.

(2) Ungraded courses shall meet the following qualifications:

(a) The course has a specialized purpose in that it is intended to meet the unique educational needs of a specific category or group of students.

(b) The course is offered for the purpose of providing the individual student with a discrete skill or basic body of knowledge that is intended to enhance potential for initial or continued employment, parenting skills or retirement.

(c) The course cannot be administered as a contract course pursuant to WAC 131-28-027, 131-32-010, or 131-32-020.

(d) The course is not one specifically or primarily intended to satisfy requirements for receiving a high school diploma.

(3) Colleges may establish the amount of waiver for the following ungraded courses:

(a) Farm management and small business management;

(b) Emergency medical technician and paramedic continuing education;

(c) Retirement;

(d) Industrial first aid offered to satisfy WISHA and approved by the department of labor and industries;

(e) Journey person training in cooperation with joint apprenticeship and training committees;

(f) Parenting education including, but not limited to, cooperative preschool programs.

(4) The waiver amounts for the following ungraded courses shall conform with the following schedule:

(a) Adult basic education, English as a second language, GED preparation: An amount to be established by the state board.

~~(b) ((Parent education involving a cooperative preschool program: Eighty-five percent reduction from the standard per credit tuition and services activities fee charge.~~

(e)) Courses offered for the purpose of satisfying related or supplemental educational requirements for apprentices registered with the Washington state apprenticeship council or federal Bureau of Apprenticeship and Training: A college shall waive one-half of the standard per credit tuition and services and activities fee. The college may convert the credit hour charge to a rounded amount per clock hour. Colleges may deduct the tuition owed from training contracts with apprentice organizations.

(5) Students taking both regular and ungraded courses will be charged separately for the courses.

(6) Application of this section shall be subject to administrative procedures established by the state director with respect to maximum credit values of such ungraded courses, curriculum, or any unique circumstances related to enrollment in such courses.

(7) Ungraded course fees received pursuant to this section shall be accounted for and deposited in local community college operating fee accounts established in RCW 28B.15.031.

(8) Ungraded course fees may be paid by the sponsoring entity rather than an individual student.

WSR 12-14-022

PERMANENT RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed June 25, 2012, 11:05 a.m., effective August 1, 2012]

Effective Date of Rule: August 1, 2012.

Purpose: The health care authority's medicaid program is amending chapter 182-552 WAC, Respiratory care (formerly titled oxygen and respiratory therapy). These rule amendments are necessary to improve clarity, update policy regarding respiratory care, reorganize the sections to be consistent with other agency recently filed chapters, and align with the Centers for Medicare and Medicaid Services where possible.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-552-001, 182-552-005, 182-552-100, 182-552-200, 182-552-210, 182-552-220, 182-552-230, 182-552-240, 182-552-300, 182-552-310, 182-552-320, 182-552-330, 182-552-340, 182-552-350, 182-552-360, 182-552-370,

182-552-380, 182-552-390, 182-552-400, 182-552-410, and 182-552-420.

Statutory Authority for Adoption: RCW 41.05.021.

Adopted under notice filed as WSR 12-09-076 on April 17, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 24, Amended 0, Repealed 21.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 24, Amended 0, Repealed 21.

Date Adopted: June 25, 2012.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-552-0001 Respiratory care—General. (1)

The respiratory care described in this chapter is considered part of the agency's durable medical equipment (DME) benefit. This chapter applies to:

(a) Medicaid clients who require respiratory care in their homes, community residential settings, and skilled nursing facilities;

(b) Providers who supply respiratory care to medicaid clients; and

(c) Licensed health care professionals whose scope of practice allows for the provision of respiratory care.

(2) The medicaid agency covers the respiratory care listed in this chapter according to the limitations and requirements in this chapter.

(3) The medicaid agency pays for respiratory care for medicaid clients when it is:

(a) Covered;

(b) Within the scope of the eligible client's medical care program;

(c) Medically necessary, as defined under chapter 182-500 WAC;

(d) Prescribed by a physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PAC) within the scope of his or her licensure;

(e) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid provider guides and provider notices;

(f) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid provider guides and provider notices; and

(g) Provided and used within accepted medical or respiratory care community standards of practice.

(4) The agency does not require prior authorization for requests for covered respiratory care for medicaid clients that meets the clinical criteria set forth in this chapter.

(5) The agency requires prior authorization for covered respiratory care for medicaid clients when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.

(a) The medicaid agency evaluates requests requiring prior authorization on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 182-501-0165.

(b) Refer to WAC 182-552-1300, 182-552-1325, 182-552-1350, and 182-552-1375 for specific details regarding authorization.

NEW SECTION

WAC 182-552-0005 Respiratory care—Definitions.

The following definitions and those in chapter 182-500 WAC apply to this chapter.

"Adult family home" - A residential home licensed to care for up to six residents that provides rooms, meals, laundry, supervision, assistance with activities of daily living, and personal care. In addition to these services, some homes provide nursing or other special care and services.

"Apnea" - The cessation of airflow for at least ten seconds.

"Apnea-hypopnea index (AHI)" - The average number of episodes of apnea and hypopnea per hour of sleep without the use of a positive airway pressure device. For purposes of this chapter, respiratory effort related arousals (RERAs) are not included in the calculation.

"Arterial PaO₂" - Measurement of partial pressure of arterial oxygen.

"Authorized prescriber" - A health care practitioner authorized by law or rule in the state of Washington to prescribe oxygen and respiratory care equipment, supplies, and services.

"Base year" - As used in this chapter, means the year in which the respiratory care medicaid provider guide's current fee schedule is adopted.

"Bi-level respiratory assist device with backup rate" - A device that allows independent setting of inspiratory and expiratory pressures to deliver positive airway pressure (within a single respiratory cycle) by way of tubing and a noninvasive interface (such as a nasal or oral facial mask) to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs. In addition, these devices have a timed backup feature to deliver this air pressure whenever sufficient spontaneous inspiratory efforts fail to occur.

"Bi-level respiratory assist device without backup rate" - A device that allows independent setting of inspiratory and expiratory pressures to deliver positive airway pressure (within a single respiratory cycle) by way of tubing and a noninvasive interface (such as a nasal, oral, or facial mask) to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs.

"Blood gas study" - For the purposes of this chapter, is either an oximetry test or an arterial blood gas test.

"Boarding home" - Adult residential care (ARC) facility, enhanced adult residential care (EARC) facility, or assisted living (AL) facility.

"Central sleep apnea (CSA)" - Is defined as:

(1) An apnea-hypopnea index (AHI) greater than or equal to five; and

(2) Central apneas/hypopneas greater than fifty percent of the total apneas/hypopneas; and

(3) Central apneas or hypopneas greater than or equal to five times per hour; and

(4) Symptoms of either excessive sleepiness or disrupted sleep.

"Chronic obstructive pulmonary disease (COPD)" - Any disorder that persistently obstructs bronchial airflow. COPD mainly involves two related diseases: Chronic bronchitis and emphysema. Both cause chronic obstruction of air flowing through the airways and in and out of the lungs. The obstruction is generally permanent and worsens over time.

"Complex sleep apnea (CompSA)" - A form of central apnea specifically identified by the persistence or emergence of central apneas or hypopneas, upon exposure to CPAP or a bi-level respiratory assist device without a back-up rate feature, when obstructive events have disappeared. These clients have predominantly obstructive or mixed apneas during the diagnostic sleep study occurring at greater than or equal to five times per hour. With use of a CPAP or bi-level respiratory assist device without a back-up rate feature, the client shows a pattern of apneas and hypopneas that meets the definition of central sleep apnea (CSA).

"Continuous positive airway pressure (CPAP)" - A single-level device which delivers a constant level of positive air pressure (within a single respiratory cycle) by way of tubing and an interface to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs.

"Dependent edema" - Fluid in the tissues, usually ankles, wrists, and the arms.

"Emergency oxygen" - The immediate, short-term administration of oxygen to a client who normally does not receive oxygen, but is experiencing an acute episode which requires oxygen.

"Erythrocythemia" - More hematocrit (red blood cells) than normal.

"FIO₂" - The fractional concentration of oxygen delivered to the client for inspiration. For the purpose of this policy, the client's prescribed FIO₂ refers to the oxygen concentration the client normally breathes when not undergoing testing to qualify for coverage of a respiratory assist device (RAD). That is, if the client does not normally use supplemental oxygen, their prescribed FIO₂ is that found in room air.

"FEV1" - The forced expired volume in one second.

"FVC" - The forced vital capacity.

"Group I" - Clinical criteria, set by medicare, to identify chronic oxygen clients with obvious respiratory challenges as evidenced by low oxygen saturation. The clinical criteria for Group I include any of the following:

- An arterial PaO₂ at or below fifty-five mm Hg or an arterial oxygen saturation (SaO₂) at or below eighty-eight percent taken at rest (awake); or

- An arterial PaO₂ at or below fifty-five mm Hg, or an arterial oxygen saturation at or below eighty-eight percent for at least five minutes taken during sleep for a client who demonstrates an arterial PaO₂ at or above fifty-six mm Hg or an arterial oxygen saturation at or above eighty-nine percent while awake; or

- A decrease in arterial PaO₂ more than ten mm Hg, or a decrease in arterial oxygen saturation more than five percent from baseline saturation for at least five minutes taken during sleep associated with symptoms (e.g., impairment of cognitive processes and nocturnal restlessness or insomnia) or signs (e.g., cor pulmonale, "P" pulmonale on EKG, documented pulmonary hypertension and erythrocytosis) reasonably attributable to hypoxemia; or

- An arterial PaO₂ at or below fifty-five mm Hg or an arterial oxygen saturation at or below eighty-eight percent, taken during exercise for a client who demonstrates an arterial PaO₂ at or above fifty-six mm Hg or an arterial oxygen saturation at or above eighty-nine percent during the day while at rest. In this case, oxygen is provided during exercise if it is documented that the use of oxygen improves the hypoxemia that was demonstrated during exercise when the client was breathing room air.

"Group II" - Clinical criteria, set by medicare, to identify borderline oxygen clients. Their blood saturation levels seem to be within the normal range, but there are additional extenuating issues that suggest a need for oxygen. The clinical criteria for Group II include any of the following:

- The presence of an arterial PaO₂ of fifty-six to fifty-nine mm Hg or an arterial blood oxygen saturation of eighty-nine percent at rest (awake), during sleep for at least five minutes, or during exercise (as described under Group I criteria); and

- Any of the following:

- Dependent edema suggesting congestive heart failure;

or

- Pulmonary hypertension or cor pulmonale, determined by measurement of pulmonary artery pressure, gated blood pool scan, echocardiogram, or "P" pulmonale on EKG (P wave greater than three mm in standard leads II, III, or AVF); or

- Erythrocythemia with a hematocrit greater than fifty-six percent.

"Home and community residential settings" - In-home, adult family home, or boarding home.

"Hypopnea" - A temporary reduction of airflow lasting at least ten seconds and accompanied with a thirty percent reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least a four percent decrease in oxygen saturation. The AHI is the average number of episodes of apnea and hypopnea per hour of sleep without the use of a positive airway pressure device.

"Hypoxemia" - Less than normal level of oxygen in the blood.

"Maximum allowable" - The maximum dollar amount the medicaid agency reimburses a provider for a specific service, supply, or piece of equipment.

"Month" - For the purposes of this chapter, means thirty days.

"Nebulizer" - A medical device which administers drugs for inhalation therapy for clients with respiratory conditions such as asthma or emphysema.

"Obstructive sleep apnea (OSA)" - This syndrome refers to the interruption of breathing during sleep, due to obstructive tissue in the upper airway that collapses into the air passage with respiration.

"Oxygen" - Medical grade liquid or gaseous oxygen.

"Oxygen concentrator" - A medical device that removes nitrogen from room air and retains almost pure oxygen (eighty-seven percent to ninety-five percent) for delivery to a client.

"Oxygen system" - All equipment necessary to provide oxygen to a client.

"Portable oxygen system" - A system which allows the client to be independent of the stationary system for several hours, thereby providing mobility for the client.

"Pulmonary hypertension" - High blood pressure in the vessels that feed through the lungs, causing the right side of the heart to work harder to oxygenate blood.

"Respiratory care" - The care of a client with respiratory needs and all related equipment, oxygen, services, and supplies.

"Respiratory care medicaid provider guide" - A manual containing procedures for billing, which is available online at <http://maa.dshs.wa.gov/download>.

"Respiratory care practitioner" - A person licensed by the department of health according to chapter 18.89 RCW and chapter 246-928 WAC as a respiratory therapist (RT) or respiratory care practitioner (RCP).

"Respiratory effort related arousals (RERA)" - These occur when there is a sequence of breaths that lasts at least ten seconds, characterized by increasing respiratory effort or flattening of the nasal pressure waveform, which lead to an arousal from sleep. However, they do not meet the criteria of an apnea or hypopnea.

"Restrictive thoracic disorders" - This refers to a variety of neuromuscular and anatomical anomalies of the chest/rib cage area that may result in hypoventilation, particularly while the client sleeps at night.

"Reasonable useful lifetime (RUL)" - For thirty-six month capped oxygen equipment, the RUL is five years. The RUL is not based on the chronological age of the equipment. It starts on the initial date of the rental and runs for five years from that date.

"Stationary oxygen system" - Equipment designed to be used in one location, generally for the purpose of continuous use or frequent intermittent use.

CLIENT ELIGIBILITY

NEW SECTION

WAC 182-552-0100 Respiratory care—Client eligibility. (1) Clients in the following medical assistance programs are eligible for respiratory care:

(a) Categorically needy (CN);

(b) Children's health care as described in WAC 388-505-0210;

(c) Medically needy (MN);

(d) Medical care services as described in WAC 182-508-0005; and

(e) Alien emergency medical (AEM) as described in WAC 388-438-0110, when the medical services are necessary to treat a qualifying emergency medical condition.

(2) Clients who are enrolled in an agency-contracted managed care organization (MCO) must arrange for all respiratory care directly through his or her MCO.

(3) For clients residing in skilled nursing facilities, boarding homes, and adult family homes, see WAC 182-552-0150.

(4) Clients who are eligible for services under medicare and medicaid (medically needy program-qualified medicare beneficiaries) are eligible for respiratory care.

NEW SECTION

WAC 182-552-0150 Respiratory care—Clients residing in skilled nursing facilities, boarding homes, and adult family homes. For eligible clients who reside in skilled nursing facilities, boarding homes, and adult family homes:

(1) The medicaid agency pays, according to the requirements in this chapter, for the chronic use of medically necessary respiratory care.

(2) The medicaid agency does not pay separately for the following:

- (a) Emergency oxygen equipment and supplies; and
- (b) Licensed respiratory care staff.

PROVIDERS

NEW SECTION

WAC 182-552-0200 Respiratory care—Provider requirements. (1) To receive payment for respiratory care equipment and supplies under this chapter, a provider must:

(a) Meet the general provider requirements in chapter 182-502 WAC;

(b) Obtain prior authorization from the medicaid agency, if required, before delivery to the client and before billing the agency;

(c) Keep initial and subsequent prescriptions according to the requirements within this chapter;

(d) Provide instructions to the client and/or caregiver on the safe and proper use of equipment provided;

(e) Have a licensed health care professional whose scope of practice allows for the provision of respiratory care. The licensed health care professional must also:

(i) Check equipment and ensure equipment settings continue to meet the client's needs; and

(ii) Communicate with the client's authorized prescriber if there are any concerns or recommendations.

(f) Verify that the client has a valid prescription.

(i) To be valid, a prescription must:

(A) Be written, and signed and dated by a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC); and

(B) State the specific items or services requested, including the quantity, frequency, and duration/length of need. Prescriptions that only state "as needed" or "PRN" are not sufficient; and

(C) For an initial prescription, not be older than three months from the date the prescriber signed the prescription; or

(D) For subsequent prescriptions, not be older than one year from the date the prescriber signs the prescription (see WAC 182-552-0800 for exception to this time frame for oxygen).

(ii) If oxygen is prescribed:

(A) The following additional information is required:

(I) Flow rate of oxygen;

(II) Estimated length of need;

(III) Frequency and duration of oxygen use; and

(IV) The client's oxygen saturation level.

(B) For clients who meet:

(I) Group I clinical criteria, recertification is required one year after initial certification.

(II) Group II clinical criteria, recertification is required three months after the initial certification and annually thereafter.

(C) Providers may use the client's oxygen saturation or laboratory values to meet recertification requirements.

(2) The medicaid agency does not pay for respiratory care equipment and/or supplies furnished to the agency's clients when:

(a) The authorized prescriber who provides medical justification to the agency for the item provided to the client is an employee of, has a contract with, or has any financial relationship with the provider of the item; or

(b) The authorized prescriber who performs a client evaluation is an employee of, has a contract with, or has any financial relationship with a provider of respiratory care equipment, supplies, and related items.

NEW SECTION

WAC 182-552-0250 Respiratory care—Proof of delivery. (1) When a provider delivers equipment directly to the client or the client's authorized representative, the provider must furnish the proof of delivery when the medicaid agency requests that information.

(2) The medicaid agency requires the proof of delivery to:

(a) Be signed and dated by the client or the client's authorized representative (the date of signature must be the date the item was received by the client); and

(b) Include the client's name and a detailed description of the item(s) delivered, including the quantity, brand name, and serial number.

~~((COVERAGE))~~ APNEA MONITORS

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

NEW SECTION

WAC 182-552-0300 Respiratory care—Covered—Apnea monitors and supplies. (1) The medicaid agency covers, without prior authorization, the rental of an apnea

monitor (cardiorespiratory monitor) with recording feature for a maximum of six months when:

(a) The client is less than one year of age and meets at least one of the following clinical criteria:

(i) Born less than thirty-seven weeks gestation, and the infant is not more than forty-three weeks corrected gestational age;

(ii) Had an apparent life-threatening apneic event (defined as requiring mouth-to-mouth resuscitation or vigorous stimulation);

(iii) Has been diagnosed with bradycardia and is being treated with caffeine, theophylline, or other stimulating agents;

(iv) Has documented gastro-esophageal reflux which results in apnea, bradycardia, or oxygen desaturation;

(v) Has documented apnea greater than twenty seconds in duration;

(vi) Has apnea for periods less than twenty seconds in duration and accompanied by bradycardia, cyanosis, or pallor;

(vii) Has bradycardia (defined as heart rate less than one hundred beats per minute);

(viii) Has oxygen desaturation below ninety percent;

(ix) Has neurologic/anatomic/metabolic or respiratory diseases affecting respiratory drive; or

(x) Is a subsequent sibling of an infant who died of sudden infant death syndrome (SIDS), until the client is one month older than the age at which the earlier sibling died and the client remains event-free; and

(b) The vendor has a licensed clinician with competency in pediatric respiratory care responsible for management of the client's apnea monitoring.

(2) For each subsequent rental period, the client must continue to meet the clinical criteria in subsection (1) of this section and the vendor must obtain prior authorization from the medicaid agency.

(3) Documentation of the result of the use of an apnea monitor must be kept in the client's record.

((REIMBURSEMENT)) CPAP/BI-LEVEL RAD

NEW SECTION

WAC 182-552-0400 Respiratory care—Continuous positive airway pressure (CPAP) device and supplies. (1) The medicaid agency covers, without prior authorization, one continuous positive airway pressure (CPAP) device including related supplies, per client, every five years. The CPAP device must have a data card and the client must meet the following clinical criteria:

(a) The client is diagnosed with obstructive sleep apnea (OSA) using a clinical evaluation and a positive attended polysomnogram (PSG) performed in a sleep laboratory. Unattended home sleep studies do not meet the medicaid agency's clinical criteria for reimbursement; and

(b) For clients thirteen years of age and older:

(i) The client's polysomnogram demonstrates an apnea-hypopnea index (AHI) greater than or equal to fifteen events per hour with a minimum of thirty events; or

(ii) The client's polysomnogram demonstrates the AHI is greater than or equal to five and less than or equal to fourteen events per hour with a minimum of ten events with clinical documentation of:

(A) Excessive daytime sleepiness, impaired cognition, mood disorders, or insomnia; or

(B) Hypertension, ischemic heart disease, or history of stroke.

(c) For clients twelve years of age and younger, the clinical criteria is considered met when there is a documented diagnosis of OSA and polysomnography demonstrates an apnea index (AI) or AHI equal to or greater than one and:

(i) Adenotonsillectomy has been unsuccessful in relieving OSA; or

(ii) Adenotonsillar tissue is minimal; or

(iii) Adenotonsillectomy is inappropriate based on OSA being attributable to another underlying cause (e.g., craniofacial anomaly, obesity) or adenotonsillectomy is contraindicated; or

(iv) Family does not wish to pursue surgical intervention.

(2) If a client meets the criteria in subsection (1) of this section but a CPAP device has been tried and proven ineffective, the medicaid agency will cover a bi-level respiratory assist device (RAD) without the back-up rate. Ineffective, in this case, is defined as documented failure to meet therapeutic goals using a CPAP during the titration portion of a facility-based study or during home use despite optimal therapy (i.e., proper mask selection and fitting and appropriate pressure setting).

(3) The AHI is calculated on the average number of events per hour. If the AHI is calculated based on less than two hours of sleep, the total number of recorded events used to calculate the AHI must be at least the number of events that would have been required in a two-hour period (i.e., must reach greater than or equal to thirty events without symptoms or greater than or equal to ten events with symptoms). The medicaid agency pays for an initial three-month rental period for CPAP devices.

(4) The medicaid agency purchases a CPAP device after the three-month rental period when the following documentation of clinical benefit is recorded in the client's file:

(a) A face-to-face clinical reevaluation of the client by the authorized prescriber which documents that symptoms of obstructive sleep apnea are improved; and

(b) A review of objective evidence by the authorized prescriber of the client's adherence to use of the CPAP device. Adherence is defined as use of the CPAP device greater than or equal to four hours per night on seventy percent of nights during a consecutive thirty-day period anytime during the first three months of initial usage.

(5) The medicaid agency does not pay for a CPAP device when the client is diagnosed with upper airway resistance syndrome (UARS).

(6) The medicaid agency pays for the purchase of a heated humidifier for a CPAP device, once every five years from the date the item was deemed purchased, per client.

(7) Replacement of CPAP device.

(a) The medicaid agency requires prior authorization for the replacement of a CPAP device if the client has had the device for less than five years.

(b) After five years, the client must have a face-to-face evaluation with the treating authorized prescriber that documents that the client continues to use and benefit from the device. The medicaid agency does not require a new PSG (sleep test), trial period, or prior authorization.

(c) Replacement supplies - The medicaid agency pays for replacement supplies for a CPAP device as follows:

(i) Full face mask, limit one every six months;

(ii) Face mask interface for full face mask, limit one every three months;

(iii) Nasal interface (mask or cannula type), with or without head strap, limit one every six months;

(iv) Cushion for use on nasal mask interface, limit one every three months;

(v) Pillow for use on nasal cannula type interface, limit one pair every three months;

(vi) Headgear, chin strap, and tubing with or without integrated heating element, limit one every six months;

(vii) Filters - Disposable, limit two every thirty days;

(viii) Filters - Nondisposable, limit one every six months; and

(ix) Water chamber for humidifier, limit one every six months.

(d) Prior authorization is required if the client does not meet the clinical criteria in this section or if the medicaid agency has purchased a bi-level respiratory assist device for the client within the last five years.

NEW SECTION

WAC 182-552-0500 Respiratory care—Covered—Bi-level respiratory assist devices and supplies. (1) The medicaid agency covers, without prior authorization, one bi-level respiratory assist device (RAD), with or without a back-up rate feature, per client every five years. The client must have a clinical disorder characterized as one of the following and meet the clinical criteria for the specific condition as listed in subsections (2) through (5) of this section.

(a) Restrictive thoracic disorders (e.g., neuromuscular diseases or severe thoracic cage abnormalities); or

(b) Severe chronic obstructive pulmonary disease (COPD); or

(c) Central sleep apnea or complex sleep apnea; or

(d) Hypoventilation syndrome.

(2) Restrictive thoracic disorders - The medicaid agency pays for, without prior authorization, a bi-level RAD either with or without the back-up rate feature, when all of the following clinical criteria are met:

(a) The client has been diagnosed with a neuromuscular disease (e.g., amyotrophic lateral sclerosis (ALS)) or a severe thoracic cage abnormality (e.g., post-thoracoplasty for tuberculosis); and

(b) Chronic obstructive pulmonary disease (COPD) does not contribute significantly to the individual's pulmonary limitation; and

(c) One or more of the following criteria are met:

(i) An arterial blood gas PaCO₂, done while awake and breathing the client's prescribed FIO₂ (fractionated inspired oxygen concentration) is greater than or equal to forty-five mm Hg; or

(ii) Sleep oximetry demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five minutes of nocturnal recording time (minimum record time of two hours), done while breathing the client's prescribed recommended FIO₂; or

(iii) For a neuromuscular disease (only), either of the following:

(A) Maximal inspiratory pressure is less than sixty cm H₂O; or

(B) Forced vital capacity is less than or equal to fifty percent predicted.

(3) Severe chronic obstructive pulmonary disease (COPD).

(a) The medicaid agency pays, without prior authorization, for a bi-level RAD, without the back-up rate feature, when all of the following clinical criteria are met:

(i) An arterial blood gas PaCO₂, done while awake and breathing the client's prescribed FIO₂, is greater than or equal to fifty-two mm Hg; and

(ii) Sleep oximetry demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five minutes of nocturnal recording time (minimum recording time of two hours), done while breathing oxygen at two LPM or the client's prescribed FIO₂, whichever is higher; and

(iii) Prior to initiating therapy, obstructive sleep apnea and treatment with CPAP has been considered and ruled out.

(b) The medicaid agency pays, without prior authorization, for a bi-level RAD, with the back-up rate feature, for clients with COPD who qualified for a bi-level RAD under (3)(a) of this section when:

(i) Started any time after a period of initial use of the bi-level RAD without the back-up rate feature when both of the following clinical criteria are met:

(A) An arterial blood gas PaCO₂, done while awake and breathing the client's prescribed FIO₂, shows that the client's PaCO₂ worsens greater than or equal to seven mm Hg compared to the original result from criterion in subsection (3)(a)(i) of this section; and

(B) A facility-based PSG demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five minutes of nocturnal recording time (minimum recording time of two hours) while using a bi-level RAD without the back-up rate feature that is not caused by obstructive upper airway events, i.e., AHI less than five; or

(ii) Started at a time no sooner than sixty-one days after initial issue of the bi-level RAD without the back-up rate feature, when both of the following clinical criteria are met:

(A) An arterial blood gas PaCO₂ is done while awake and breathing the client's prescribed FIO₂, still remains greater than or equal to fifty-two mm Hg; and

(B) Sleep oximetry while breathing with the bi-level RAD without back-up rate feature, demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five minutes of nocturnal recording time

(minimum recording time of two hours), done while breathing oxygen at two LPM or the client's prescribed FIO₂, whichever is higher.

(4) Central sleep apnea or complex sleep apnea (i.e., not due to airway obstruction). The medicaid agency pays for, without prior authorization, a bi-level RAD with or without the back-up rate feature, when the client's polysomnogram test reveal all of the following:

(a) The diagnosis of central sleep apnea (CSA) or complex sleep apnea (CompSA);

(b) Significant improvement of the sleep-associated hypoventilation with the use of a bi-level RAD with or without the back-up rate feature on the settings that will be prescribed for initial use at home, while breathing the client's prescribed FIO₂.

(5) Hypoventilation syndrome.

(a) The medicaid agency pays for, without prior authorization, a bi-level RAD without the back-up rate feature, when the clinical criteria in (a)(i) and (ii) of this subsection, or either (a)(iii) or (iv) of this subsection are met:

(i) An initial arterial blood gas PaCO₂, done while awake and breathing the client's prescribed FIO₂, is greater than or equal to forty-five mm Hg; and

(ii) Spirometry shows an FEV1/FVC greater or equal to seventy percent and an FEV1 greater than or equal to fifty percent of predicted; or

(iii) An arterial blood gas PaCO₂, done during sleep or immediately upon awakening, and breathing the client's prescribed FIO₂, shows the client's PaCO₂ worsened greater than or equal to seven mm Hg compared to the original result in (a) of this subsection; or

(iv) A facility-based PSG demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five continuous minutes of nocturnal recording time (minimum recording time of two hours) that is not caused by obstructive upper airway events, i.e., AHI less than five.

(b) The medicaid agency pays for, without prior authorization, a bi-level RAD with the back-up rate feature, when the clinical criteria in (b)(i) and (ii) of this subsection, and either (b)(iii) or (iv) of this subsection are met:

(i) A covered bi-level RAD without the back-up rate feature is being used; and

(ii) Spirometry shows an FEV1/FVC greater than or equal to seventy percent and an FEV1 greater than or equal to fifty percent of predicted; and

(iii) An arterial blood gas PaCO₂, done while awake and breathing the client's prescribed FIO₂, shows that the client's PaCO₂ worsens greater than or equal to seven mm Hg compared to the ABG result performed to qualify the client for the bi-level RAD without the back-up rate feature; or

(iv) A facility-based PSG demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five continuous minutes of nocturnal recording time (minimum recording time of two hours) that is not caused by obstructive upper airway events, i.e., AHI less than five while using a bi-level RAD without the back-up rate feature.

(6) For a bi-level RAD without the back-up rate feature, the medicaid agency pays as follows:

(a) An initial three-month rental period. In accordance with medicare's guidelines, the medicaid agency requires a face-to-face clinical reevaluation of the client by the treating authorized prescriber, between day thirty-one and day ninety-one of the rental period, which documents the following in the client's file to continue rental:

(i) The progress of the client's relevant symptoms; and

(ii) The client's compliance with using the device.

(b) Purchases after the requirements of (a) of this subsection are met.

(7) For a bi-level RAD with the back-up rate feature used with:

(a) An invasive interface, the medicaid agency pays for the rental only.

(b) A noninvasive interface, the medicaid agency pays as follows:

(i) An initial three-month rental period. In accordance with medicare's guidelines, the medicaid agency requires a face-to-face clinical reevaluation of the client by the treating authorized prescriber, between day thirty-one and day ninety-one of the rental period, which documents the following in the client's file to continue rental:

(ii) The progress of the client's relevant symptoms; and

(iii) The client's compliance with using the device.

(iv) Purchase after a total of thirteen months of rental.

(8) Prior authorization is required if the client does not meet the clinical criteria in this section or if the medicaid agency has purchased a CPAP device or other respiratory assist device for the client within the last five years.

(9) Replacement of bi-level RAD. The medicaid agency's policy for replacement of a bi-level RAD is the same as for a CPAP device. See WAC 182-552-0400(6).

AIRWAY CLEARANCE DEVICES

NEW SECTION

WAC 182-552-0600 Respiratory care—Covered—Airway clearance devices. Chest physiotherapy (CPT), which is also known as percussion and postural drainage (P/PD), is traditionally seen as the standard of care of secretion clearance methods. There are client instances when conventional manual CPT is unavailable, ineffective, or not tolerated. The medicaid agency then covers the following types of airway clearance devices when medically necessary for an individual with a diagnosis that is characterized by excessive mucus production and difficulty clearing secretions:

(1) Mechanical percussors. One per client, per lifetime;

(2) Oscillatory positive expiratory pressure devices. One per client every one hundred and eighty days;

(3) Positive expiratory pressure devices. Requires prior authorization (PA);

(4) Cough stimulating device, alternating positive and negative airway pressure. Requires PA; and

(5) High frequency chest wall oscillation air-pulse generator system. Requires PA.

NEBULIZERS/HUMIDIFIERS/INHALATION DRUGSNEW SECTION

WAC 182-552-0650 Respiratory care—Covered—Nebulizers, humidifiers, and accessories. (1) The medicaid agency covers, without prior authorization, the purchase of a nebulizer and related compressor, with limits, when the following medicare clinical criteria are met.

(a) Small volume nebulizer and related compressor for the administration of inhalation drugs for:

- (i) The management of obstructive pulmonary disease;
- (ii) A client with cystic fibrosis or bronchiectasis;
- (iii) A client with HIV, pneumocystosis, or complications of organ transplants; or
- (iv) Persistent, thick, or tenacious pulmonary secretions.

(b) Large volume nebulizer and related compressor to deliver humidity to a client with thick, tenacious secretions and who has one or more of the following:

- (i) Cystic fibrosis;
- (ii) Bronchiectasis;
- (iii) A tracheostomy; or
- (iv) A tracheobronchial stent.

(c) Filtered nebulizer when necessary to administer pentamidine to clients with HIV, pneumocystosis, or complications of organ transplants.

(2) The medicaid agency limits payments, per client, as follows:

(a) Compressor - One every five years. Requires thirteen months rental first. After thirteen months, the compressor is considered purchased.

(b) Nebulizer with compressor - One every five years. Reimbursement includes instruction on the proper use and cleaning of the equipment.

(3) The medicaid agency pays separately for medically necessary accessories as follows:

(a) Administration set. Purchase only.

(i) With small volume filtered or nonfiltered pneumatic nebulizer, disposable. Limited to one per client every thirty days.

(ii) With small volume nonfiltered pneumatic nebulizer, nondisposable. Limited to one per client every six months.

(b) Aerosol mask, used with nebulizer. Purchase only. Limited to one per client every thirty days.

(c) Corrugated tubing, used with large volume nebulizer. Purchase only.

(i) Disposable, limited to one unit (one hundred feet) per client every sixty days.

(ii) Nondisposable, limited to one unit (ten feet) per client every twelve months.

(d) Face tent. Purchase only. Limited to one per client every thirty days.

(e) Filter. Purchase only.

(i) Disposable, limited to two per client every thirty days.

(ii) Nondisposable, limited to one per client every ninety days.

(f) Large volume nebulizer, disposable, unfilled, used with aerosol compressor. Limited to ten per client every thirty days.

(g) Small volume nonfiltered pneumatic nebulizer, disposable. Purchase only. Limited to two per client every thirty days.

(h) Tracheostomy mask, each. Purchase only. Limited to four per client every thirty days.

(i) Heated humidifier with temperature monitor and alarm for clients who have a tracheostomy but who are not ventilator dependent. Monthly rental only. Prior authorization is required.

(j) Water collection device, used with large volume nebulizer. Purchase only. Limited to eight per client every thirty days.

(k) Water, distilled, used with large volume nebulizer, 1000 ml. Limited to fifty units per client every thirty days.

(l) Immersion external heater for a nebulizer. Purchase only. Prior authorization is required.

(4) Providers must monitor the amount of supplies and accessories a client is actually using and assure that the client has nearly exhausted the supply on hand prior to dispensing any additional items.

(5) The medicaid agency does not pay for a large volume nebulizer, related compressor/generator, and water or saline when used predominantly to provide room humidification.

NEW SECTION

WAC 182-552-0700 Respiratory care—Covered—Inhalation drugs and solutions. Inhalation drugs and solutions are included in the medicaid agency's prescription drug program. Refer to chapter 182-530 WAC.

OXYGEN AND OXYGEN EQUIPMENTNEW SECTION

WAC 182-552-0800 Respiratory care—Covered—Oxygen and oxygen equipment. The medicaid agency follows medicare clinical guidelines for respiratory care, unless otherwise described in this chapter.

(1) The medicaid agency covers, without prior authorization, the rental of a stationary oxygen system and/or a portable oxygen system, as follows:

(a) For clients, twenty years of age and younger, when prescribed by the client's treating practitioner; or

(b) For clients, twenty-one years of age and older, when prescribed by a practitioner and the client meets medicare group I or group II clinical criteria as defined in WAC 182-552-005. Prior authorization is required for clients, twenty-one years of age and older, who do not meet medicare clinical criteria.

(2) Oxygen and oxygen equipment - Capped rental:

(a) Capped rental applies to in-home oxygen use by medical assistance clients only;

(b) The medicaid agency's payment for stationary oxygen system equipment and/or portable oxygen system equipment is limited to thirty-six monthly rental payments. During the rental period, the medicaid agency's payment includes any supplies, accessories, oxygen contents, delivery and associated costs, instructions, maintenance, servicing, and repairs;

(c) Oxygen systems are deemed capped rental (provider continues to own the equipment) after thirty-six months.

(i) The supplier who provides the oxygen equipment for the first month must continue to provide any necessary oxygen equipment and related items and services through the thirty-six month rental period unless one of the exceptions in (e) of this subsection is met.

(ii) The same provider is required to continue to provide the client with properly functioning oxygen equipment (including maintenance and repair), and associated supplies for the remaining twenty-four months of the equipment's reasonable useful lifetime (RUL).

(iii) The same provider may bill the medicaid agency for oxygen contents, disposable supplies, and maintenance fees only. Maintenance fee payment is limited to one every six months.

(d) At any time after the end of the five-year RUL for the oxygen equipment, the provider may replace the equipment, thus beginning a new thirty-six month rental period.

(e) A thirty-six month rental period may restart in the following situations only. Providers must follow the medicaid agency's expedited prior authorization process, see WAC 182-552-1300, Respiratory care—Authorization.

(i) The initial provider is no longer providing oxygen equipment or services;

(ii) The initial provider's core provider agreement with the medicaid agency is terminated or expires;

(iii) The client moves to an area which is not part of the provider's service area (this applies to medicaid only clients);

(iv) The client moves into a permanent residential setting; or

(v) The pediatric client is transferred to an adult provider.

(f) The medicaid agency may authorize a restart of the thirty-six month rental period when extenuating circumstances exist that result in a loss or destruction of oxygen equipment that occurred while the client was exercising reasonable care under the circumstances (e.g., fire, flood, etc.) (see WAC 182-501-0050(7)). Providers must obtain prior authorization from the medicaid agency.

(3) Stationary oxygen systems/contents.

(a) The medicaid agency pays a maximum of one rental payment for stationary oxygen systems including contents, per client, every thirty days. The medicaid agency considers a stationary oxygen system as one of the following:

(i) Compressed gaseous oxygen;

(ii) Stationary liquid oxygen; or

(iii) A concentrator.

(b) Contents only: The medicaid agency pays a maximum of one payment for stationary oxygen contents, per client, every thirty days, when the client owns the stationary oxygen system or the capped monthly rental period is met.

(c) Maintenance: The medicaid agency pays for one maintenance fee of a stationary oxygen concentrator and oxygen transfilling equipment every six months only when the capped rental period is met or the client owns the stationary oxygen concentrator. The maintenance fee is fifty percent of the monthly rental rate.

(4) Portable oxygen systems/oxygen contents:

(a) The medicaid agency pays a maximum of one rental payment for portable oxygen systems including oxygen contents, per client, every thirty days. The medicaid agency considers a portable oxygen system to be either gas or liquid.

(b) Contents only: The medicaid agency pays a maximum of one payment for portable oxygen contents, per client, every thirty days, when the client owns the portable oxygen system or when the capped monthly rental period is met.

(c) Maintenance: The medicaid agency pays for one maintenance fee of a portable oxygen concentrator and oxygen transfilling equipment every six months only when the capped rental period is met or the client owns the portable oxygen concentrator. The maintenance fee is fifty percent of the monthly rental rate.

(5) The medicaid agency does not pay for oxygen therapy and related services, equipment or supplies for clients twenty-one years of age and older, with, but not limited to, the following conditions:

(a) Angina pectoris in the absence of hypoxemia;

(b) Dyspnea without cor pulmonale or evidence of hypoxemia; and

(c) Severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities but in the absence of systemic hypoxemia.

(6) The medicaid agency does not pay separately for humidifiers with rented oxygen equipment. All accessories, such as humidifiers necessary for the effective use of oxygen equipment are included in the monthly rental payment.

(7) The medicaid agency does not pay separately for spare tanks of oxygen and related supplies as backup or for travel.

(8) The medicaid agency requires a valid prescription for oxygen in accordance with WAC 182-552-200. In addition, for both initial and ongoing prescriptions for the use of oxygen, the medicaid agency requires the following:

(a) For clients who meet medicare's group I criteria (chronic oxygen clients):

(i) A prescription for the initial twelve months or the authorized prescriber's specified length of need, whichever is shorter, and a renewed prescription at least every twelve months thereafter; and

(ii) Documented verification, at least every twelve months, that oxygen saturations or lab values substantiate the need for continued oxygen use for each client. For ongoing coverage, the provider may perform the oxygen saturation measurements. The medicaid agency does not accept lifetime certificates of medical need (CMNs).

(b) For clients who meet medicare's group II criteria (borderline oxygen clients):

(i) A prescription for the initial three months or the authorized prescriber's specified length of need, whichever is shorter and a renewed prescription is required three months after the initial certification and annually thereafter.

(ii) Verification that oxygen saturations or lab values substantiate the need for continued oxygen use must be documented in the client's file. For ongoing coverage, the provider may perform the oxygen saturation measurements. The medicaid agency does not accept lifetime CMNs.

(9) The medicaid agency requires that documentation of oxygen saturation and lab values taken to substantiate the medical necessity of continued oxygen be kept in the client's record.

(10) Oxygen supplies - Replacement. The medicaid agency pays for replacement oxygen supplies after the thirty-six month capped rental period or if the client owns the equipment as follows:

(a) Nasal cannula, limited to two per client every thirty days;

(b) Tubing (oxygen), limited to one replacement per client every thirty days; and

(c) Variable concentration mask, limited to two per client every thirty days.

(11) See WAC 182-552-1200, Respiratory care—Non-covered services.

OXIMETERS

NEW SECTION

WAC 182-552-0900 Respiratory care—Covered—Oximeters. (1) The medicaid agency covers the purchase of oximeters for clients eighteen years of age and older with prior authorization as follows:

(a) One standard oximeter, per client, every twenty-four months; or

(b) One enhanced oximeter, per client, every thirty-six months.

(2) The medicaid agency covers the purchase of oximeters for clients seventeen years of age and younger, in the home, as follows:

(a) When the client meets one of the following clinical criteria:

(i) Has chronic lung disease and is on supplemental oxygen;

(ii) Has a compromised or artificial airway; or

(iii) Has chronic lung disease requiring ventilator or bi-level respiratory assist device; and

(b) The following limitations apply:

(i) One standard oximeter, per client, every twenty-four months, without prior authorization; or

(ii) One enhanced oximeter, per client, every thirty-six months, with expedited prior authorization.

(3) The medicaid agency pays for replacement supplies as follows:

(a) Cables for enhanced oximeter only, limited to two per client per year. Prior authorization (PA) is required.

(b) Probes.

(i) Nondisposable, limited to one per client every one hundred eighty days.

(ii) Disposable, limited to four per client every thirty days.

VENTILATORS

NEW SECTION

WAC 182-552-1000 Respiratory care—Covered—Respiratory and ventilator equipment and supplies. (1) The medicaid agency covers the rental of a ventilator, equip-

ment, and related disposable supplies when the ventilator is for the treatment of chronic respiratory failure (chronic carbon dioxide retention).

(2) The medicaid agency's monthly rental rate includes ventilator maintenance and accessories including, but not limited to, humidifiers, nebulizers, alarms, temperature probes, batteries, chargers, adapters, connectors, fittings, tubing, disposable circuits, and filters. The medicaid agency does not pay separately for ventilator accessories unless the client owns the ventilator system, see subsection (5) of this section.

(3) Ventilators, equipment, and related disposable supplies must:

(a) Be used exclusively by the client for whom it is requested;

(b) Be FDA-approved; and

(c) Not be included in any other reimbursement methodology such as, but not limited to, a diagnosis-related group (DRG).

(4) The medicaid agency pays for a back-up (secondary) ventilator at fifty percent of the monthly rental rate when one or more of the following clinical criteria are met:

(a) The client cannot maintain spontaneous ventilations for four or more consecutive hours;

(b) The client lives in an area where a replacement ventilator cannot be provided within two hours;

(c) The client requires mechanical ventilation during mobility as prescribed in their plan of care.

(5) The medicaid agency pays for the purchase of the following replacement ventilator accessories only for client-owned ventilator systems:

(a) Gel-cell battery charger - One every twenty-four months;

(b) Gel-cel heavy-duty battery - One every twenty-four months;

(c) Battery cables - Once every twenty-four months; and

(d) Breathing circuits - Four every thirty days.

(6) Pressure support ventilators.

(a) For clients eighteen years of age and older, the medicaid agency requires prior authorization;

(b) For clients seventeen years of age and younger, the medicaid agency requires expedited prior authorization (EPA).

(i) The following criteria must be met in order to use the EPA process:

(A) The client is currently using a pressure support ventilator;

(B) The client must be able to take spontaneous breaths;

(C) There must be an authorized prescriber's order for the pressure support setting; and

(D) The client must be utilizing the ventilator in the pressure support mode.

(ii) If the client has no clinical potential for weaning, the medicaid agency's EPA is valid for twelve months; or

(iii) If the client has the potential to be weaned, then the medicaid agency's EPA is valid for six months;

(iv) To continue using EPA after the valid time period has lapsed, a vendor must document in the client's file that the client continues to meet the EPA criteria for a pressure support ventilator.

SUCTION PUMPS

NEW SECTION

WAC 182-552-1100 Respiratory care—Covered—Suction pumps and supplies. (1) The medicaid agency covers suction pumps and supplies when medically necessary for airway clearance or tracheostomy suctioning.

(2) The medicaid agency pays for a maximum of two suction devices per client in a five-year period as follows:

(a) The medicaid agency rents one primary suction device (stationary or portable) per client, for use in the home and one secondary suction device, per client, for backup or portability.

(b) The medicaid agency considers the suction devices purchased after twelve months rental.

(3) The medicaid agency pays for supplies for suction devices as follows:

(a) Catheter - Closed system. Limit one per day per client.

(b) Catheter - Any type other than closed system:

(i) Clients eight years of age and older, one hundred fifty per client, every thirty days;

(ii) Clients seven years of age and younger, three hundred per client, every thirty days.

(c) Oropharyngeal suction catheter, limited to four per client every thirty days.

(d) Canister - Disposable:

(i) Limited to five per client every thirty days for primary suction device;

(ii) Limited to five per client every thirty days for secondary suction device.

(e) Canister - Nondisposable. Limited to one per client every twelve months.

(f) Tubing. Limited to fifteen per client every thirty days.

NONCOVERED SERVICESNEW SECTION

WAC 182-552-1200 Respiratory care—Noncovered services. (1) The medicaid agency pays for respiratory care only when listed as covered in this chapter. In addition to the noncovered services found in WAC 182-501-0070, the medicaid agency does not cover:

(a) Emergency or stand-by oxygen systems;

(b) Portable nebulizers;

(c) Kits and concentrates for use in cleaning respiratory equipment;

(d) Intrapulmonary percussive ventilation systems and related accessories;

(e) Batteries for a CPAP;

(f) Items or services which primarily serve as a convenience for the client or caregiver;

(g) Oximetry checks;

(h) Loaner equipment.

(2) The medicaid agency evaluates a request for respiratory care listed as noncovered in this chapter under the provisions of WAC 182-501-0160.

AUTHORIZATION

NEW SECTION

WAC 182-552-1300 Respiratory care—Authorization. (1) The medicaid agency requires providers to obtain authorization for covered respiratory care as required in this chapter, chapters 182-501 and 182-502 WAC, and in published agency medicaid provider guides and/or provider notices or when the clinical criteria required in this chapter are not met.

(a) For prior authorization (PA), a provider must submit a written request to the medicaid agency as specified in the agency's published respiratory care medicaid provider guide.

(b) For expedited prior authorization (EPA), a provider must document that the client has met the clinically appropriate EPA criteria outlined in the medicaid provider guide. The appropriate EPA number must be used when the provider bills the medicaid agency.

(c) Upon request, a provider must provide documentation to the medicaid agency showing how the client's condition met the criteria for PA or EPA.

(2) Authorization requirements in this chapter are not a denial of service.

(3) When a service requires authorization, the provider must properly request authorization in accordance with the medicaid agency's rules, medicaid provider guides, and provider notices.

(4) When authorization is not properly requested, the medicaid agency rejects and returns the request to the provider for further action. The medicaid agency does not consider the rejection of the request to be a denial of service.

(5) The medicaid agency's authorization of service(s) does not necessarily guarantee payment.

(6) The medicaid agency evaluates requests for authorization of covered respiratory care equipment and supplies that exceed limitations in this chapter on a case-by-case basis in accordance with WAC 182-501-0169.

(7) The medicaid agency may recoup any payment made to a provider if the agency later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC 182-502-0100 (1)(c).

NEW SECTION

WAC 182-552-1325 Prior authorization. (1) The medicaid agency requires providers to obtain prior authorization for certain items and services before delivering that item or service to the client, except when the items and services are covered by a third-party payer. The item or service must also be delivered to the client before the provider bills the medicaid agency.

(2) All prior authorization requests must be accompanied by a completed General Information for Authorization form (HCA 13-835), in addition to any program specific medicaid agency forms as required within this chapter. Agency forms are available on-line at <http://hrsa.dshs.wa.gov/mpforms.shtml>.

(3) When the medicaid agency receives the initial request for prior authorization, the prescription(s) for those

items or services must not be older than three months from the date the agency receives the request.

(4) The medicaid agency requires certain information from providers in order to prior authorize the purchase or rental of equipment. This information includes, but is not limited to, the following:

- (a) The manufacturer's name;
- (b) The equipment model; and
- (c) A detailed description of the item.

(5) For prior authorization requests, the medicaid agency requires the prescribing provider to furnish client-specific justification for respiratory care. The medicaid agency does not accept general standards of care or industry standards for generalized equipment as justification.

(6) The medicaid agency considers requests for new respiratory care that do not have assigned health care common procedure coding system (HCPCS) codes and are not listed in the agency's published issuances, including medicaid provider guides and provider notices. These items require prior authorization. The provider must furnish all of the following information to the medicaid agency to establish medical necessity:

- (a) A detailed description of the item(s) or service(s) to be provided;
- (b) The cost or charge for the item(s);
- (c) A copy of the manufacturer's invoice, price list or catalog with the product description for the item(s) being provided; and
- (d) A detailed explanation of how the requested item(s) differs from an already existing code description.

(7) The medicaid agency does not pay for the purchase, rental, or repair of respiratory care equipment that duplicates equipment the client already owns or rents. If the provider believes the purchase, rental, or repair of respiratory care equipment is not duplicative, the provider must request prior authorization and submit the following to the medicaid agency:

- (a) Why the existing equipment no longer meets the client's medical needs; or
- (b) Why the existing equipment could not be repaired or modified to meet the client's medical needs; and
- (c) Upon request, documentation showing how the client's condition met the criteria for PA or EPA.

(8) A provider may resubmit a request for prior authorization for an item or service that the medicaid agency has denied. The medicaid agency requires the provider to include new documentation that is relevant to the request.

NEW SECTION

WAC 182-552-1350 Limitation extension (LE). (1) The medicaid agency limits the amount, frequency, or duration of certain covered respiratory care, and reimburses up to the stated limit without requiring prior authorization.

(2) Certain covered items have limitations on quantity and frequency. These limits are designed to avoid the need for prior authorization for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client.

(3) The medicaid agency requires a provider to request prior authorization for a limitation extension (LE) in order to exceed the stated limits for respiratory care. All requests for prior authorization must be accompanied by a completed General Information for Authorization form (HCA 13-835) in addition to any program specific medicaid agency forms as required within this chapter. Agency forms are available online at <http://hrsa.dshs.wa.gov/mpforms.shtml>.

(4) The medicaid agency evaluates such requests for LE under the provisions of WAC 182-501-0169.

NEW SECTION

WAC 182-552-1375 Expedited prior authorization (EPA). (1) The expedited prior authorization (EPA) process is designed to eliminate the need for written requests for prior authorization for selected respiratory care procedure codes.

(2) The medicaid agency requires a provider to create an authorization number for EPA for selected respiratory care procedure codes. The process and criteria used to create the authorization number is explained in the agency published respiratory care medicaid provider guide. The authorization number must be used when the provider bills the medicaid agency.

(3) Upon request, a provider must provide documentation to the medicaid agency showing how the client's condition met the criteria for EPA.

(4) A written request for prior authorization is required when a situation does not meet the EPA criteria for selected respiratory care procedure codes.

(5) The medicaid agency may recoup any payment made to a provider under this section if the provider did not follow the EPA process and criteria.

REIMBURSEMENT

NEW SECTION

WAC 182-552-1400 Respiratory care—Reimbursement—General. (1) The medicaid agency pays qualified providers who meet all of the conditions in WAC 182-502-0100, for covered respiratory care provided on a fee-for-service (FFS) basis as follows:

(a) To medicaid agency-enrolled durable medical equipment (DME) providers, pharmacies, and home health agencies under their national provider identifier (NPI) numbers, subject to the limitations of this chapter, and according to the procedures and codes in the agency's current respiratory care medicaid provider guide; and

(b) In accordance with the health care common procedure coding system (HCPCS) guidelines for product classification and code assignment.

(2) The medicaid agency updates the maximum allowable fees for respiratory care at least once per year, unless otherwise directed by the legislature or unless deemed necessary by the agency.

(3) The medicaid agency sets, evaluates, and updates the maximum allowable fees for respiratory care using available published information including, but not limited to:

- (a) Commercial data bases;
- (b) Manufacturer's catalogs;

- (c) Medicare fee schedules; and
 - (d) Wholesale prices.
- (4) The medicaid agency may adopt policies, procedure codes, and/or rates that are inconsistent with those set by medicare if the agency determines that such actions are necessary.
- (5) The medicaid agency's maximum payment for respiratory care is the lesser of either of the following:
- (a) Provider's usual and customary charges; or
 - (b) Established rates, except as provided in WAC 182-502-0110(3).
- (6) The medicaid agency is the payer of last resort for clients with medicare or third-party insurance.
- (7) The medicaid agency does not pay for respiratory care provided to a client who is enrolled in an agency-contracted managed care organization (MCO), but who did not use one of the MCO's participating providers.
- (8) The medicaid agency's reimbursement rate for covered oxygen and respiratory equipment and supplies includes all of the following:
- (a) Any adjustments or modifications to the equipment that are required within three months of the date of delivery or are covered under the manufacturer's warranty. This does not apply to adjustments required because of changes in the client's medical condition;
 - (b) Any pick-up and/or delivery fees or associated costs (e.g., mileage, travel time, gas, etc.);
 - (c) Telephone calls;
 - (d) Shipping, handling, and/or postage;
 - (e) Maintenance for rented equipment including, but not limited to, testing, cleaning, regulating, and assessing the client's equipment;
 - (f) Fitting and/or setup; and
 - (g) Instruction to the client or client's caregiver in the appropriate use of the respiratory care.
- (9) Respiratory care equipment, supplies, and related repairs and labor charges that are supplied to eligible clients under the following reimbursement methodologies are included in those methodologies and are not reimbursed under fee-for-service (FFS):
- (a) Hospice provider's per diem reimbursement;
 - (b) Hospital's diagnosis-related group (DRG) reimbursement;
 - (c) Managed care organization's capitation rate;
 - (d) Skilled nursing facilities per diem rate; and
 - (e) Professional service's resource-based relative value system reimbursement (RBRVS) rate.
- (10) The provider must make warranty information, including date of purchase, applicable serial number, model number or other unique identifier of the respiratory care equipment, and warranty period, available to the medicaid agency upon request.
- (11) The dispensing provider who furnishes respiratory care equipment or supplies to a client is responsible for any costs incurred to have a different provider repair the equipment when:
- (a) Any equipment or supply that the medicaid agency considers purchased requires repair during the applicable warranty period;

- (b) The provider refuses or is unable to fulfill the warranty; and
 - (c) The respiratory care equipment or supply continues to be medically necessary.
- (12) If rental respiratory equipment or supplies must be replaced during the warranty period, the medicaid agency recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the respiratory equipment or supply provided to the client if:
- (a) The provider is unwilling or unable to fulfill the warranty; and
 - (b) The respiratory care equipment or supply continues to be medically necessary.
- (13) The medicaid agency does not reimburse for respiratory care equipment and supplies, or related repairs and labor charges under FFS when the client is any of the following:
- (a) An inpatient hospital client;
 - (b) Terminally ill and receiving hospice care; or
 - (c) Enrolled in a risk-based MCO that includes coverage for such items and/or services.
- (14) The medicaid agency rescinds any purchase order for a prescribed item if the equipment or supply was not supplied to the client before the client:
- (a) Dies;
 - (b) Loses medical eligibility;
 - (c) Becomes covered by a hospice agency; or
 - (d) Becomes covered by an MCO.
- (15) See WAC 182-543-9100, 182-543-9200, 182-543-9300, and 182-543-9400 for other reimbursement methodologies.

NEW SECTION

- WAC 182-552-1500 Respiratory care equipment and supplies—Reimbursement—Decision to rent or purchase.** (1) The medicaid agency bases the decision to rent or purchase respiratory care equipment and supplies for a client, or pay for repairs and associated labor for client-owned equipment, on cost and on the length of time the client needs the equipment.
- (2) A provider must not bill the medicaid agency for the rental or purchase of equipment supplied to the provider at no cost by suppliers/manufacturers.
- (3) The medicaid agency purchases new equipment only.
- (a) A new item that is placed with a client initially as a rental item is considered a new item by the medicaid agency at the time of purchase.
- (b) A used item that is placed with a client initially as a rental item must be replaced by the supplier with a new item prior to purchase by the medicaid agency.
- (4) The medicaid agency requires a dispensing provider to ensure the item rented to a client is:
- (a) In good working order; and
 - (b) Comparable to equipment the provider rents to individuals with similar medical equipment needs who are either private pay or who have other third-party coverage.
- (5) The medicaid agency's minimum rental period for covered respiratory care equipment and supplies is one day.

(6) The medicaid agency's reimbursement amount for rented respiratory care equipment and supplies includes all of the following:

- (a) A full service warranty;
- (b) Cost of delivery to, or pick up from, the client's residence and, when appropriate, to and from the room in which the equipment will be used;
- (c) Fitting, setup, adjustments, and modifications;
- (d) Maintenance, repair and/or replacement, and cleaning of the equipment;
- (e) Instructions to the client and/or client's caregiver for safe and proper use of the equipment; and
- (f) All medically necessary accessories, contents, and disposable supplies, unless separately billable according to the agency's current respiratory care medicaid provider guide.

(7) The medicaid agency considers some rented equipment to be purchased after twelve months' rental unless the equipment is restricted as rental only; this equipment is identified in the respiratory care medicaid provider guide.

(8) Respiratory care equipment and supplies purchased by the medicaid agency for a client are the client's property, unless identified as capped rental items by the agency. Capped rental items are considered the property of the provider and are identified in the respiratory care medicaid provider guide.

(9) The medicaid agency stops paying for any rented equipment effective the date of a client's death. The medicaid agency prorates monthly rentals as appropriate.

(10) For a client who is eligible for both medicare and medicaid, the medicaid agency pays only the client's coinsurance and deductibles. The medicaid agency discontinues paying client's coinsurance and deductibles for rental equipment when either of the following applies:

- (a) The reimbursement amount reaches medicare's reimbursement cap for the equipment; or
- (b) Medicare considers the equipment purchased.

(11) The medicaid agency does not obtain or pay for insurance coverage against liability, loss and/or damage to rental equipment that a provider supplies to a client.

(12) The medicaid agency does not pay for:

- (a) Defective equipment;
- (b) The cost of materials covered under the manufacturer's warranty or administrative fees charged by the manufacturer to perform warranty or repair work; or

(c) Repair or replacement of equipment as a result of the client's carelessness, negligence, recklessness, or misuse in accordance with WAC 182-501-0050(7). The medicaid agency may request documentation (e.g., police report, etc.) at its discretion.

(13) Capped rental oxygen equipment and client-owned equipment:

(a) Capped rental oxygen equipment is considered to have a reasonable useful lifetime of five years. The medicaid agency will pay for new equipment on capped rental items for eligible clients after five years of continuous use, at which point the capped rental period of thirty-six months will start again.

(b) Equipment is considered to be client-owned if it is not identified as a capped rental item in the agency's respira-

tory care medicaid provider guide and if the medicaid agency has reached the maximum reimbursement for the item.

(c) The agency pays for the repair of client-owned respiratory equipment with prior authorization. The age of the equipment is considered, and all of the following criteria must be met:

- (i) All warranties are expired;
- (ii) The cost of the repair is less than fifty percent of the cost of a new item and the provider has supporting documentation; and
- (iii) The repair has a warranty for a minimum of ninety days.

NEW SECTION

WAC 182-552-1600 Respiratory care equipment and supplies—Reimbursement—Methodology for purchase, rental, and repair. (1) The medicaid agency sets, evaluates, and updates the maximum allowable fees for purchased respiratory care equipment and supplies at least once yearly using one or more of the following:

(a) The current medicare rate, as established by the federal Centers for Medicare and Medicaid Services (CMS), for a new purchase if a medicare rate is available;

- (b) A pricing cluster; or
- (c) On a by-report basis.

(2) Establishing reimbursement rates for purchased respiratory care equipment and supplies based on pricing clusters.

(a) A pricing cluster is based on a specific health care common procedure coding system (HCPCS) code.

(b) The medicaid agency's pricing cluster is made up of all the brands/models for which the agency obtains pricing information. However, the medicaid agency may limit the number of brands/models included in the pricing cluster. The medicaid agency considers all of the following when establishing the pricing cluster:

- (i) A client's medical needs;
- (ii) Product quality;
- (iii) Introduction, substitution, or discontinuation of certain brands/models;
- (iv) Cost; and/or
- (v) Available alternatives.

(c) When establishing the fee for purchased respiratory care equipment and supplies in a pricing cluster, the maximum allowable fee is the median amount of available manufacturer's list or suggested retail prices for all brands/models as noted in (b) of this subsection.

(3) The medicaid agency evaluates items, procedures, and services billed using miscellaneous procedure codes, when an established code is not available, on a case-by-case basis for medical necessity, appropriateness, and reimbursement value. The medicaid agency calculates the purchase reimbursement rate for these items at eighty percent of the manufacturer's list or suggested retail price as of October thirty-first of the base year or the cost from the manufacturer's invoice.

(4) The medicaid agency's maximum allowable fees for monthly rental are updated at least once yearly and are established using one of the following:

(a) For items with a monthly rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency equates its maximum allowable fee for monthly rental to the current medicare monthly rental rate;

(b) For items that have a new purchase rate but no monthly rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency sets the maximum allowable fee for monthly rental at one-tenth of the new purchase price of the current medicare rate; or

(c) For items not included in the current medicare fee schedule, as established by CMS, the medicaid agency considers the maximum allowable monthly reimbursement rate as by-report. The medicaid agency calculates the monthly reimbursement rate for these items at one-tenth of eighty percent of the manufacturer's list or suggested retail price as of October thirty-first of the base year or one-tenth the cost from the manufacturer's invoice.

(5) The medicaid agency's maximum allowable fees for daily rental are updated at least once yearly and are established using one of the following:

(a) For items with a daily rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency equates its maximum allowable fee for daily rental to the current medicare daily rental rate;

(b) For items that have a new purchase rate but no daily rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency sets the maximum allowable fee for daily rental at one three-hundredth of the new purchase price of the current medicare rate; or

(c) For items not included in the current medicare fee schedule, as established by CMS, the medicaid agency considers the maximum allowable daily reimbursement rate as by-report. The medicaid agency calculates the daily reimbursement rate for these items at one three-hundredth of eighty percent of the manufacturer's list or suggested retail price as of October thirty-first of the base year or one three-hundredth of the cost from the manufacturer's invoice.

(6) The medicaid agency, with prior authorization, will pay for repairs of client-owned equipment only. In addition to agency-specific forms identified in the respiratory care medicaid provider guide, all of the following requirements must be met in order to receive authorization and reimbursement for a repair of client-owned equipment:

(a) The provider must submit a manufacturer pricing sheet showing manufacturer's list or suggested retail price (MSRP) or manufacturer invoice showing the cost of the repair identifying and itemizing the parts. The invoice must indicate the wholesale acquisition cost, the manufacturer's list or suggested retail price (MSRP) for all parts used in the repair for which reimbursement is being sought. Reimbursement for parts used in a repair will be:

(i) Eighty percent of the manufacturer's list or suggested retail price as of October thirty-first of the base year; or

(ii) The cost from the manufacturer's invoice.

(b) Reimbursement for actual labor charges will be made according to the medicaid agency's current fee schedule. The provider must follow HCPCS coding guidelines and submit an authorization request accordingly with actual labor units identified and supported by documentation. Base labor

charges or other administrative-like fees will not be reimbursed.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-552-001	Scope.
WAC 182-552-005	Definitions.
WAC 182-552-100	Client eligibility.
WAC 182-552-200	Providers—General responsibilities.
WAC 182-552-210	Required records.
WAC 182-552-220	Requirements for oxygen providers.
WAC 182-552-230	Requirements for infant apnea monitors.
WAC 182-552-240	Requirements for respiratory care practitioners.
WAC 182-552-300	Coverage.
WAC 182-552-310	Coverage—Oxygen and oxygen equipment.
WAC 182-552-320	Coverage—Continuous positive airway pressure (CPAP) and supplies.
WAC 182-552-330	Coverage—Ventilator therapy, equipment, and supplies.
WAC 182-552-340	Coverage—Infant apnea monitor program.
WAC 182-552-350	Coverage—Respiratory and ventilator therapy.
WAC 182-552-360	Coverage—Suction pumps and supplies.
WAC 182-552-370	Coverage—Inhalation drugs and solutions.
WAC 182-552-380	Coverage—Oximeters.
WAC 182-552-390	Coverage—Nursing facilities.
WAC 182-552-400	Reimbursement for covered services.
WAC 182-552-410	Reimbursement methods.
WAC 182-552-420	Reimbursement methodology.

WSR 12-14-025
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed June 25, 2012, 1:45 p.m., effective August 1, 2012]

Effective Date of Rule: August 1, 2012.

Purpose: WAC 246-254-130 Radioactive waste disposal site surveillance fee increase and clarification of who must pay, this rule increases the fee to "meet the actual cost of conducting business," to offset the costs of program activities related to regulatory oversight of the site, and maintain the department's agreement with the United States Nuclear Regulatory Commission as required by RCW 70.98.110. Editorial changes were made to clarify who must pay the fee.

Citation of Existing Rules Affected by this Order: Amending WAC 246-254-130.

Statutory Authority for Adoption: RCW 70.98.085, 2ESHB 1087.

Other Authority: RCW 70.98.050, 70.98.085, and 70.98.110.

Adopted under notice filed as WSR 12-10-069 on May 1, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 25, 2012.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-254-130 Radioactive waste disposal site surveillance fee. (1) The department shall charge a radioactive waste site surveillance fee (~~((for radioactive waste site surveillance))~~) of twenty-six dollars per cubic foot to generators and brokers of LLRW (low-level radioactive waste) and NARM (naturally occurring and accelerator produced radioactive material).

(2) The fee shall be an added charge on each cubic foot of ~~((low-level waste))~~ LLRW and NARM disposed at the disposal site.

(3) The department shall authorize by contract the operator of a low-level radioactive waste disposal site to collect the fee from waste generators and brokers.

(4) The department shall provide for reimbursement to the site operator for collection costs.

(5) The department shall calculate the fee collected from waste generators and brokers as required under RCW 70.98.085 and the fee shall not exceed the statutory limit specified in that section.

(6) The site operator shall remit the fee to the department as follows:

(a) Quarterly for the first seven quarters of each biennium.

(b) By July 15 for the final quarter of the biennium.

WSR 12-14-039
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 27, 2012, 10:01 a.m., effective July 28, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Under RCW 43.20A.725 and 80.36.430, the department is required to annually determine the tax rates imposed on switched access lines to fund the telephone relay service program and the Washington telephone assistance program. The telecommunications relay services (TRS) and Washington telephone assistance program (WTAP) tax rates are determined by dividing the respective program budgets by the number of switched access lines reported to the department in the prior calendar year. The department retains no discretion in the determination of these tax rates, the amount of which is explicitly dictated by the statutory formulas and inputs provided to the department.

The department is amending WAC 458-20-270 to recognize the tax rates effective July 1, 2012. The TRS rate is being reduced from nineteen cents to seventeen cents per switched access line for the upcoming fiscal year. The WTAP rate remains at fourteen cents per switched access line for the upcoming fiscal year. These rates were previously announced by the department in a special notice dated April 5, 2012, and can be found at http://dor.wa.gov/Docs/Pubs/SpecialNotices/2012/sn_12_TelephoneTax.pdf.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-270 Telephone program excise tax rates.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 43.20A.725 and 80.36.430.

Adopted under notice filed as WSR 12-09-032 on April 11, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 27, 2012.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-13-110, filed 6/21/11, effective 7/22/11)

WAC 458-20-270 Telephone program excise tax rates. RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (telephone relay service—TRS) and 80.36.430 (Washington telephone assistance program—WTAP). Pursuant to those statutes, the department must annually determine the rate of each respective tax according to the statutory formulas.

The monthly telephone program excise tax rates per switched access line are as follows:

Period	TRS Rate	WTAP Rate
((7/1/2007—6/30/2008	12 cents	14 cents))
7/1/2008 - 6/30/2009	12 cents	13 cents
7/1/2009 - 6/30/2010	11 cents	13 cents
7/1/2010 - 6/30/2011	19 cents	14 cents
7/1/2011 - 6/30/2012	19 cents	14 cents
<u>7/1/2012 - 6/30/2013</u>	<u>17 cents</u>	<u>14 cents</u>

WSR 12-14-041

PERMANENT RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed June 27, 2012, 10:52 a.m., effective July 28, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: On July 1, 2012, a substantial number (100,000+) of fee-for-service (FFS) clients will be shifted to managed care. The health care authority (HCA) currently makes supplemental payments to trauma care providers for FFS clients who meet specified criteria, but trauma care services provided to managed care clients are not eligible for such payments. The proposed rules/amendments will allow HCA to make supplemental payments to trauma care providers for clients in managed care. HCA will also apply for a federal waiver to pay hospitals the supplemental payments outside the capitation rate. These steps will help prevent the loss of up to \$7.5M per year in federal matching funds from the statewide trauma care system. The proposed rules also include housekeeping changes (e.g., replacing DSHS with HCA).

Citation of Existing Rules Affected by this Order: Amending WAC 182-531-2000 and 182-550-5450.

Statutory Authority for Adoption: RCW 41.05.021.

Adopted under notice filed as WSR 12-11-076 on May 16, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 27, 2012.

Kevin M. Sullivan
Rules Coordinator

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

WAC 182-531-2000 Increased payments for physician-related services for qualified trauma cases. (1) The ~~((department of social and health services' (DSHS)))~~ health care authority's physician trauma care fund (TCF) is an amount that is legislatively appropriated to ~~((DSHS))~~ the medicaid agency each biennium for the purpose of increasing the ~~((department's))~~ agency's payment to physicians and other clinicians (those who are performing services within their licensed and credentialed scope of practice) providing qualified trauma care services to medical assistance clients covered under the ~~((department's fee-for-service))~~ agency's medical assistance programs.

(2) Trauma care services provided to clients in:

(a) ~~((Fee-for-service clients in medicaid, general assistance-unemployable (GAU), Alcohol and Drug Addiction Treatment and Support Act (ADATSA)))~~ Medicaid, disability lifeline (DL), incapacity-based medical care services (MCS), children's health insurance program (CHIP), and apple health for kids, qualify for enhanced rate payments from the TCF. Trauma care services provided to a ((GAU)) DL or ((ADATSA)) MCS client qualify for enhanced rates only during the client's certification period. See WAC ((388-416-0010)) 182-504-0010;

(b) ~~((Clients in))~~ The alien emergency medical (AEM), refugee assistance, and alien medical programs do not qualify for enhanced rate payments from the TCF; and

(c) ~~((Clients enrolled in the department's))~~ The agency's managed care programs ((do not)) qualify for enhanced rate payments from the TCF, effective with dates of service on and after July 1, 2012.

(3) To receive payments from the TCF, a physician or other clinician must:

(a) Be on the designated trauma services response team of any department of health (DOH)-designated or DOH-recognized trauma service center;

(b) Meet the provider requirements in this section and other applicable ~~((WAC))~~ rules;

(c) Meet the billing requirements in this section and other applicable ~~((WAC))~~ rules; and

(d) Submit all information the ~~((department))~~ agency requires to monitor the trauma program.

(4) Except as described in subsection (5) of this section and subject to the limitations listed, the ~~((department))~~ agency makes payments from the TCF to physicians and other clinicians:

(a) For only those trauma services that are designated by the ~~((department))~~ agency as "qualified." Qualified trauma care services include:

(i) Follow-up surgical services provided within six months of the date of the injury. These surgical procedures must have been planned during the initial acute episode of injury; and

(ii) Psychiatrist services provided during an inpatient stay immediately following, and within six months of, the ~~((initial episode of))~~ qualifying traumatic injury.

(b) For hospital-based professional services-only, and for follow-up surgeries performed in a medicare-certified ambulatory surgery center (ASC). The follow-up surgery must have been performed within six months of the initial traumatic injury.

(c) Only for trauma cases that meet the injury severity score (ISS) (a summary rating system for traumatic anatomic injuries) ~~((of))~~ criteria specified by the agency. The current qualifying ISS are:

(i) Thirteen or greater for an adult trauma patient (a client age fifteen or older); ~~((of))~~ and

(ii) Nine or greater for a pediatric trauma patient (a client younger than age fifteen).

(d) On a per-client basis in any DOH-designated or DOH-recognized trauma service center.

(e) At a rate of two and one-half times the ~~((department's))~~ agency's current fee-for-service rate for qualified trauma services, or other payment enhancement percentage the ~~((department determines as))~~ agency deems appropriate.

(i) The ~~((department))~~ agency monitors the payments from the TCF during each state fiscal year (SFY) and makes necessary adjustments to the rate to ensure that total payments from the TCF for the ~~((biennium))~~ SFY will not exceed the legislative appropriation for that ~~((biennium))~~ SFY.

(ii) Laboratory and pathology charges are not eligible for payments from the TCF. (See subsection (6)(b) of this section.)

(5) When a trauma case is transferred from one hospital to another, the ~~((department))~~ agency makes payments from the TCF to physicians and clinicians, according to the ISS score as follows:

(a) If the transferred case meets or exceeds the appropriate ISS threshold described in subsection (4)(c) of this section, providers who furnish qualified trauma services, whether in ~~((either))~~ the transferring or receiving facility, are eligible for payments from the TCF.

(b) If the transferred case is below the ISS threshold described in subsection (4)(c) of this section, only providers who furnish qualified trauma services in the receiving hospital are eligible for payments from the TCF.

(6) The ~~((department))~~ agency makes a TCF payment to a physician or clinician:

(a) Only when the provider submits an eligible trauma claim with the appropriate trauma indicator within the time frames specified by the ~~((department))~~ agency; and

(b) On a per-claim basis. Each qualifying trauma service and/or procedure on the provider's claim is paid at the ~~((department's))~~ agency's current fee-for-service rate, multiplied by the appropriate payment enhancement percentage described in subsection (4)(e) of this section. Laboratory and pathology services and/or procedures are not eligible for payments from the TCF and are paid at the ~~((department's))~~ agency's current fee-for-service rate.

(7) For purposes of the payments from the TCF to physicians and other clinicians, all of the following apply:

(a) The ~~((department))~~ agency considers a request for a claim adjustment submitted by a provider only if the ~~((department))~~ agency receives the adjustment request within three hundred sixty-five days from the date of the initial trauma service. At its discretion, and with sufficient public notice, the ~~((department))~~ agency may adjust the deadline for submission and/or adjustment of trauma claims in response to budgetary or other program needs;

(b) Except as provided in subsection (7)(a) of this section, the deadline for making adjustments to a trauma claim is the same as the deadline for submitting the initial claim to the ~~((department))~~ agency as specified in WAC ~~((388-502-0150(3)))~~ 182-502-0150(3). See WAC ~~((388-502-0150))~~ 182-502-0150 (11) and (12) for other time limits applicable to trauma claims;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total payments from the TCF disbursed to providers by the ~~((department))~~ agency in ~~((a biennium))~~ an SFY cannot exceed the amount appropriated by the legislature for that ~~((biennium))~~ SFY. The ~~((department))~~ agency has the authority to take whatever actions are needed to ensure the ~~((department))~~ agency stays within its TCF appropriation (see subsection (4)(e)(i) of this section).

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

WAC 182-550-5450 Supplemental distributions to approved trauma service centers. (1) The trauma care fund (TCF) is an amount ~~((legislatively))~~ appropriated to the ~~((department))~~ medicaid agency each ~~((biennium))~~ state fiscal year (SFY), at the legislature's sole discretion, for the purpose of supplementing the ~~((department's))~~ agency's payments to eligible trauma service centers for providing qualified trauma services to medicaid ~~((fee-for-service))~~ clients. Claims for trauma care provided to medicaid clients enrolled in the ~~((department's))~~ agency's managed care programs are ~~((not))~~ eligible for supplemental distributions from the TCF effective with dates of service on and after July 1, 2012.

(2) The ~~((department))~~ agency makes supplemental distributions from the TCF to qualified hospitals, subject to the provisions in this section and subject to legislative action.

(3) To qualify for supplemental distributions from the TCF, a hospital must:

(a) Be designated or recognized by the department of health (DOH) as an approved Level I, Level II, or Level III adult or pediatric trauma service center;

(b) Meet the provider requirements in this section and other applicable ~~((WAC))~~ rules;

(c) Meet the billing requirements in this section and other applicable ~~((WAC))~~ rules;

(d) Submit all information the ~~((department))~~ agency requires to monitor the program; and

(e) Comply with DOH's Trauma Registry reporting requirements.

(4) Supplemental distributions from the TCF are:

(a) Allocated into five payment pools. Timing of payments is described in subsection (5) of this section. Distributions from the payment pools to the individual hospitals are determined by first summing the agency's qualifying payments to each eligible ~~((hospital's qualifying payments))~~ hospital since the beginning of the service year and expressing this amount as a percentage of the agency's total payments to all eligible hospitals for qualifying services provided during the service year-to-date. For TCF purposes, service year is defined as the ~~((state fiscal year))~~ SFY. Each hospital's qualifying payment percentage for the service year-to-date is multiplied by the available amount for the service year-to-date, and then the ~~((department))~~ agency subtracts what has been allocated to each hospital for the service year-to-date to determine the portion of the current payment pool to be paid to each qualifying hospital. ~~((This method for determining supplemental distributions to hospitals applies to TCF allotments beginning with state fiscal year (SFY) 2008.))~~ Eligible hospitals and qualifying payments are described in (a)(i) through (iii) of this subsection. Qualifying payments are the agency's payments to:

(i) ~~((Qualifying payments are the department's payments to))~~ Level I, Level II, and Level III trauma service centers for qualified medicaid trauma cases since the beginning of the service year. The ~~((department))~~ agency determines the countable payment for trauma care provided to medicaid clients based on date of service, not date of payment;

(ii) The ~~((department's payments to))~~ Level I, Level II, and Level III hospitals for trauma cases transferred ~~((#))~~ to these facilities since the beginning of the service year. A Level I, Level II, or Level III hospital that receives a transferred trauma case from any lower level hospital is eligible for the enhanced payment, regardless of the client's injury severity score (ISS); and

(iii) ~~((The department's payments to))~~ Level II and Level III hospitals for qualified trauma cases (those that meet or exceed the ISS criteria in ~~((subsection (4))~~(b) of this ~~((section))~~ subsection) transferred by these hospitals since the beginning of the service year to a trauma service center with a higher designation level.

(b) Paid only for a medicaid trauma case that meets:

(i) The ISS of thirteen or greater for an adult trauma patient (a client age fifteen or older);

(ii) The ISS of nine or greater for a pediatric trauma patient (a client younger than age fifteen); or

(iii) The conditions of ~~((subsection (4))~~(c) of this subsection.

(c) Made to hospitals, as follows, for a trauma case that is transferred:

(i) A hospital that receives the transferred trauma case qualifies for payment regardless of the ISS if the hospital is designated or recognized by DOH as an approved Level I, Level II, or Level III adult or pediatric trauma service center;

(ii) A hospital that transfers the trauma case qualifies for payment only if:

(A) It is designated or recognized by DOH as an approved Level II or Level III adult or pediatric trauma service center; and

(B) The ISS requirements in (b)(i) or ~~((b))~~(ii) of this subsection are met.

(iii) A hospital that DOH designates or recognizes as an approved Level IV or Level V trauma service center does not qualify for supplemental distributions for trauma cases that are transferred in or transferred out, even when the transferred cases meet the ISS criteria in ~~((subsection (4))~~(b) of this ~~((section))~~ subsection.

(d) Not funded by disproportionate share hospital (DSH) funds; and

(e) Not distributed by the ~~((department))~~ agency to:

(i) Trauma service centers designated or recognized as Level IV or Level V;

(ii) Critical access hospitals (CAHs), except when the CAH is also a Level III trauma service center ~~((Beginning with qualifying trauma services provided in SFY 2007, the department allows a hospital with this dual status to receive distributions from the TCF));~~ or

(iii) Any facility for follow-up services related to the qualifying trauma incident but provided to the client after the client has been discharged from the initial hospitalization for the qualifying injury.

(5) Distributions for an SFY are paid as follows:

(a) The first supplemental distribution from the TCF is made three to six months after the SFY begins;

(b) Subsequent distributions are made approximately every two to four months after the first distribution is made, except as described in ~~((subsection))~~ (c) of this subsection;

(c) The final distribution from the TCF for ~~((the same))~~ an SFY is:

(i) Made one year after the end of the SFY;

(ii) ~~((Based on the SFY that the TCF designated amount relates to;))~~ Limited to the remaining balance of the agency's TCF appropriation for that SFY; and

(iii) Distributed based on each eligible hospital's percentage share of the total payments made by the ~~((department))~~ agency to all designated trauma service centers for qualified trauma ~~((eases))~~ services provided during the relevant SFY.

(6) For purposes of the supplemental distributions from the TCF, all of the following apply:

(a) The ~~((department))~~ agency considers a provider's request for a trauma claim adjustment only if the adjustment request is received by the ~~((department))~~ agency within three hundred sixty-five calendar days from the date of the initial trauma service. At its discretion, and with sufficient public notice, the ~~((department))~~ agency may adjust the deadline for submission and/or adjustment of trauma claims in response to budgetary program needs;

(b) Except as provided in ~~((subsection (6))~~(a) of this ~~((section))~~ subsection, the deadline for making adjustments to a trauma claim is the same as the deadline for submitting the initial claim to the ~~((department))~~ agency as specified in WAC ~~((388-502-0150(3)))~~ 182-502-0150(3). See WAC ~~((388-502-0150))~~ 182-502-0150 (11) and (12) for other time limits applicable to TCF claims;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total amount of supplemental distributions from the TCF disbursed to eligible hospitals by the ~~((department))~~ agency in any ~~((biennium))~~ SFY cannot exceed the amount appropriated by the legislature for that ~~((biennium))~~ SFY. The ~~((department))~~ agency has the authority to take whatever actions necessary to ensure the department stays within the TCF appropriation.

WSR 12-14-051

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Nursing Home Administrators)

[Filed June 28, 2012, 12:06 p.m., effective July 29, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-843-010 clarifies that the standards for nursing home administrators do not change even when the licensed nursing facility converts some of its beds to assisted living. WAC 246-843-205 links the standards of conduct for an on-site full-time administrator to this definition.

Citation of Existing Rules Affected by this Order: Amending WAC 246-843-010 and 246-843-205.

Statutory Authority for Adoption: Chapter 366, Laws of 2011, RCW 18.52.030.

Adopted under notice filed as WSR 12-06-061 on March 5, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: May 4, 2012.

Blake T. Maresh
Executive Director

AMENDATORY SECTION (Amending WSR 00-01-071, filed 12/13/99, effective 1/13/00)

WAC 246-843-010 General definitions. Terms used in these rules have the following meanings:

(1) "On-site, full-time administrator" is an individual in active administrative charge of one nursing home facility or collocated facilities, as licensed under chapter 18.51 RCW, a minimum of four days and an average of forty hours per week. ~~((Exception:))~~ An "on-site, full-time administrator" in nursing homes with small resident populations, ~~((or))~~ in rural areas, or in nursing homes with small resident populations when the nursing home has converted some of its licensed nursing facility bed capacity for use as assisted living or enhanced assisted living services under chapter 74.39A RCW is an individual in active administrative charge of one nursing home facility, or collocated facilities, as licensed under chapter 18.51 RCW:

(a) A minimum of four days and an average of twenty hours per week at facilities with one to thirty nursing home beds; or

(b) A minimum of four days and an average of thirty hours per week at facilities with thirty-one to forty-nine nursing home beds.

(2) "Active administrative charge" is direct participation in the operating concerns of a nursing home. Operating concerns include, but are not limited to, interaction with staff and residents, liaison with the community, liaison with regulatory agencies, pertinent business and financial responsibilities, planning and other activities as identified in the most current job analysis published by the National Association of Boards of Examiners for Long-Term Care Administrators.

(3) "Person" means an individual and does not include the terms firm, corporation, institutions, public bodies, joint stock associations, and other such entities.

(4) "Nursing home administrator-in-training" means an individual in an administrator-in-training program approved by the board.

(5) "Secretary" means the secretary of the department of health or the secretary's designee.

(6) "Collocated facilities" means more than one licensed nursing facility situated on a contiguous or adjacent property, whether or not there are intersecting streets. Other criteria to qualify as a collocated facility would be determined by the nursing home licensing agency under chapter 18.51 RCW.

(7) "Recognized institution of higher learning" means an accredited degree granting institution in the United States or outside the United States that is listed in the directory of accredited institutions of postsecondary education published by the American Council on Education.

AMENDATORY SECTION (Amending WSR 00-01-067, filed 12/13/99, effective 1/13/00)

WAC 246-843-205 Standards of conduct. Licensed nursing home administrators shall be on-site full time as defined in WAC 246-843-010(1) and in active administrative charge of the licensed nursing home, as licensed under chapter 18.51 RCW, in which they have consented to serve as administrator.

WSR 12-14-052
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)

[Filed June 28, 2012, 1:50 p.m., effective August 1, 2012]

Effective Date of Rule: August 1, 2012.

Purpose: The department is amending WAC 388-412-0025 to:

- Allow monthly state supplemental payment (SSP) benefits to be deposited directly into a recipient's bank account as an electronic funds transfer (EFT), or into an electronic benefits transfer (EBT) account that can be accessed with a debit card called the Washington EBT Quest card.
- Streamline the rules for use of electronic benefits transfer (EBT) accounts.
- Eliminate the additional requirements for emergent needs language to align with WAC 388-436-0002.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-412-0025.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Adopted under notice filed as WSR 12-10-097 on May 2, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 27, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-21-071, filed 10/16/09, effective 11/16/09)

WAC 388-412-0025 How do I ~~((get))~~ receive my benefits? (1) ~~((We send))~~ You can choose to get your cash benefits ~~((to you by either))~~ by:

(a) Electronic benefit transfer (EBT), which is a direct deposit into a DSHS account that you access with a debit card called the Washington EBT Quest card;

(b) Electronic funds transfer (EFT), which is a direct deposit into your own bank account;

(c) A warrant (check) to an approved authorized representative (AREP);

~~((d))~~ (d) A warrant (check) to a payee who is not approved for direct deposit; or

~~((e))~~ (e) A warrant (check) to you if you get:

(i) Diversion cash assistance (DCA) that ~~((cannot be))~~ is not paid directly to a vendor;

~~((ii))~~ (ii) ~~((Additional requirements for emergent needs (AREN) that cannot be paid directly to a vendor;~~

~~((iii))~~ (iii) Ongoing additional requirements (OAR) that cannot be paid directly to a vendor; or

~~((iv))~~ (iv) Clothing and personal incidentals (CPI) payments ~~((; or~~

~~((v))~~ (v) ~~State supplemental payment (SSP) and you do not receive your benefit through EFT).~~

(2) We send your **Basic Food** benefits to you by EBT.

(3) ~~((We set up an EBT account for the head of household of each AU that receives benefits by EBT.~~

~~((4))~~ (4) EBT accounts:

(a) We set up an EBT account for the head of household of each assistance unit (AU) that receives benefits by EBT.

(b) You use a Quest debit card to access your benefits in your EBT account. You select a personal identification number (PIN) that you must enter when using this card.

~~((5))~~ (c) You must use your cash and Basic Food benefits from your EBT account. We ~~((do not convert))~~ cannot transfer cash to your bank account or change cash or Basic Food benefits to checks.

~~((6))~~ ~~We deposit your Basic Food benefits into your EBT account by the tenth day of the month based on your Basic Food assistance unit number as described in WAC 388-412-0020.~~

~~((7))~~ (d) Unused EBT benefits: If you do not use your EBT account ~~((for))~~ within three hundred sixty-five days, we cancel the cash and Basic Food benefits on your account.

(4) Replacing benefits:

(a) Replacing Basic Food benefits:

(i) We **can replace** cancelled benefits we deposited **less than three hundred sixty-five days** from the date you ask for us to replace your benefits.

(ii) We **cannot replace** cancelled benefits deposited **three hundred sixty-five or more days** from the date you ask us to replace your benefits.

(b) **Replacing cash benefits:** We **can replace** cancelled cash benefits for you or another member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

~~((8))~~ (c) **Replacing cash warrants:** ~~((If we issued you cash benefits as a warrant we can replace these benefits for you or a member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.~~

~~((a))~~ (i) If we issued you cash benefits as a warrant we can replace these benefits for you or a member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(ii) If we issued the benefits as a warrant one hundred sixty or fewer days ago, your local office can replace the warrant.

~~((b))~~ (iii) If we issued the benefits as a warrant more than one hundred sixty days ago, the Office of Accounting Services (OAS) can replace the warrant. We will contact OAS with the request.

~~((9))~~ (5) Correcting your EBT balance: When you make a purchase with your EBT card a system error can occur where the purchase amount is not deducted from your EBT account. When the error is discovered the following will happen:

(a) You will be notified in writing of the system error before the money is removed from your account; and

(b) You will have ninety days to request an administrative hearing. If you ask for an administrative hearing within ten calendar days, the money will not be removed from your EBT account unless:

(i) You withdraw your administrative hearing request in writing;

(ii) You do not follow through with the administrative hearing process; or

(iii) The administrative law judge tells us in writing to remove the money.

WSR 12-14-064

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 29, 2012, 11:40 a.m., effective July 30, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is repealing and amending rules in chapter 388-106 WAC, Long-term care services, to revise the assessment process for allocating personal care hours to disabled children as a result of the Washington state supreme court decision regarding the *Samantha A. v. DSHS*.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-106-0126 and 388-106-0213; and amending WAC 388-106-0075 and 388-106-0210.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 12-07-080 on March 20, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 2.

Date Adopted: June 26, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0075 How is my need for personal care services assessed in CARE? ~~((To assess your need for personal care services;))~~ The department gathers information from you, your caregivers, family members(;) and other sources to assess your abilities to perform personal care tasks. The department will also consider developmental milestones for children as defined in WAC 388-106-0130 when individually assessing your abilities and needs for assistance. The department will assess your ability to perform:

(1) Activities of daily living (ADL) using self performance(;) support provided, status and assistance available, as defined in WAC 388-106-0010. Also, the department determines your need for "assistance with body care" and "assistance with medication management," as defined in WAC 388-106-0010; and

(2) Instrumental activities of daily living (IADL) using self performance(;) difficulty, status and assistance available, as defined in WAC 388-106-0010.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-106-0126 If I am under age twenty-one, how does CARE use criteria to place me in a classification group for in-home care?

WAC 388-106-0213 How are my needs assessed if I am a child applying for MPC services?

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 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0210 Am I eligible for MPC-funded services? You are eligible for MPC-funded services when the department assesses your ~~((needs))~~ functional ability and determines that you meet all of the following criteria:

(1) You are certified as noninstitutional categorically needy, as defined in WAC 388-500-0005. Categorically needy medical institutional programs described in chapter 388-513 WAC do not meet this criteria.

(2) You are functionally eligible which means one of the following applies:

(a) You have an unmet or partially met need for assistance with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

Your need for assistance in any of the activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose determining your functional eligibility.

WSR 12-14-065
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 29, 2012, 11:45 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The stumpage values subject to this rule making are required by statute (RCW 84.33.091) to be effective on July 1, 2012.

Purpose: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The updated values in WAC 458-40-660 apply to the second half of 2012. The updating of stumpage values for this time period required the consolidation of stumpage value areas (SVAs), which will result in the elimination of other SVAs, changes to some log quality codes, and definition changes. As a result, other rules in chapter 458-40 WAC were amended to recognize these changes.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments, 458-40-610 Timber excise tax—Definitions, 458-40-640 Timber excise tax—Stumpage value area (map), 458-40-650 Timber excise tax—Timber quality codes defined, and 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods—Sample scaling—Conversions.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Other Authority: RCW 84.33.091.

Adopted under notice filed as WSR 12-10-047 on April 30, 2012, and WSR 12-10-088 on May 2, 2012 (WAC 458-40-680, only).

A final cost-benefit analysis is available by contacting Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1574, e-mail markbohe@dor.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 29, 2012.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-07-040, filed 3/10/10, effective 4/10/10)

WAC 458-40-610 Timber excise tax—Definitions. (1) **Introduction.** The purpose of WAC 458-40-610 through 458-40-680 is to prescribe the policies and procedures for the taxation of timber harvested from public and private forest lands as required by RCW 84.33.010 through 84.33.096.

Unless the context clearly requires otherwise, the definitions in this rule apply to WAC 458-40-610 through 458-40-680. In addition to the definitions found in this rule, definitions of technical forestry terms may be found in *The Dictionary of Forestry*, 1998, edited by John A. Helms, and published by the Society of American Foresters.

(2) **Codominant trees.** Trees whose crowns form the general level of the main canopy and receive full light from above, but comparatively little light from the sides.

(3) **Competitive sales.** The offering for sale of timber which is advertised to the general public for sale at public auction under terms wherein all qualified potential buyers have an equal opportunity to bid on the sale, and the sale is awarded to the highest qualified bidder. The term "competitive sales" includes making available to the general public permits for the removal of forest products.

(4) **Cord measurement.** A measure of wood with dimensions of 4 feet by 4 feet by 8 feet (128 cubic feet).

(5) **Damaged timber.** Timber where the stumpage values have been materially reduced from the values shown in the applicable stumpage value tables due to damage resulting from fire, blow down, ice storm, flood, or other sudden unforeseen causes.

(6) **Dominant trees.** Trees whose crowns are higher than the general level of the main canopy and which receive full light from the sides as well as from above.

(7) **Firewood.** Commercially traded firewood is considered scaled utility log grade as defined in subsection (14) of this section.

(8) **Forest-derived biomass.** Forest-derived biomass consists of tree limbs, tops, needles, leaves, and other woody debris that are residues from such activities as timber harvesting, forest thinning, fire suppression, or forest health. Forest-derived biomass does not include scalable timber products or firewood (defined in WAC 458-40-650).

(9) **Harvest unit.** An area of timber harvest, defined and mapped by the harvester before harvest, having the same stumpage value area, hauling distance zone, harvest adjustments, harvester, and harvest identification. The harvest identification may be a department of natural resources forest practice application number, public agency harvesting permit number, public sale contract number, or other unique identifier assigned to the timber harvest area prior to harvest operations. A harvest unit may include more than one section, but harvest unit may not overlap a county boundary.

(10) **Harvester.** Every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester. In cases where the identity of the harvester is in doubt, the department of revenue will consider the owner of the land from which the timber was harvested to be the harvester and the one liable for paying the tax.

The definition above applies except when the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use. When a governmental entity described above fells, cuts, or takes timber, the harvester is the first person, other than another governmental entity as described above, acquiring title to or a possessory interest in such timber.

(11) **Harvesting and marketing costs.** Only those costs directly and exclusively associated with harvesting merchantable timber from the land and delivering it to the buyer. The term includes the costs of piling logging residue on site, and costs to abate extreme fire hazard when required by the department of natural resources. Harvesting and marketing costs do not include the costs of other consideration (for example, reforestation, permanent road construction), treatment to timber or land that is not a necessary part of a commercial harvest (for example, precommercial thinning, brush clearing, land grading, stump removal), costs associated with maintaining the option of land conversion (for example, county fees, attorney fees, specialized site assessment or evaluation fees), or any other costs not directly and exclusively associated with the harvesting and marketing of merchantable timber. The actual harvesting and marketing costs must be used in all instances where documented records are available. When the taxpayer is unable to provide documented proof of such costs, or when harvesting and marketing costs can not be separated from other costs, the deduction for harvesting and marketing costs is thirty-five percent of the gross receipts from the sale of the logs.

(12) **Hauling distance zone.** An area with specified boundaries as shown on the statewide stumpage value area and hauling distance zone maps contained in WAC 458-40-640, having similar accessibility to timber markets.

(13) **Legal description.** A description of an area of land using government lots and standard general land office subdivision procedures. If the boundary of the area is irregular, the physical boundary must be described by metes and bounds or by other means that will clearly identify the property.

(14) **Log grade.** Those grades listed in the "*Official Log Scaling and Grading Rules*" developed and authored by the Northwest Log Rules Advisory Group (Advisory Group). "Utility grade" means logs that do not meet the minimum requirements of peeler or sawmill grades as defined in the "*Official Log Scaling and Grading Rules*" published by the Advisory Group but are suitable for the production of firm useable chips to an amount of not less than fifty percent of the

gross scale; and meeting the following minimum requirements:

- (a) Minimum gross diameter—two inches.
- (b) Minimum gross length—twelve feet.
- (c) Minimum volume—ten board feet net scale.
- (d) Minimum recovery requirements—one hundred percent of adjusted gross scale in firm useable chips.

(15) **Lump sum sale.** Also known as a cash sale or an installment sale, it is a sale of timber where all the volume offered is sold to the highest bidder.

(16) **MBF.** One thousand board feet measured in Scribner Decimal C Log Scale Rule.

(17) **Noncompetitive sales.** Sales of timber in which the purchaser has a preferential right to purchase the timber or a right of first refusal.

(18) **Other consideration.** Value given in lieu of cash as payment for stumpage, such as improvements to the land that are of a permanent nature. Some examples of permanent improvements are as follows: Construction of permanent roads; installation of permanent bridges; stockpiling of rock intended to be used for construction or reconstruction of permanent roads; installation of gates, cattle guards, or fencing; and clearing and reforestation of property.

(19) **Permanent road.** A road built as part of the harvesting operation which is to have a useful life subsequent to the completion of the harvest.

(20) **Private timber.** All timber harvested from privately owned lands.

(21) **Public timber.** Timber harvested from federal, state, county, municipal, or other government owned lands.

(22) **Remote island.** An area of land which is totally surrounded by water at normal high tide and which has no bridge or causeway connecting it to the mainland.

(23) **Scale sale.** A sale of timber in which the amount paid for timber in cash and/or other consideration is the arithmetic product of the actual volume harvested and the unit price at the time of harvest.

(24) **Small harvester.** A harvester who harvests timber from privately or publicly owned forest land in an amount not exceeding two million board feet in a calendar year.

(25) **Species.** A grouping of timber based on biological or physical characteristics. In addition to the designations of species or subclassifications defined in Agriculture Handbook No. 451 Checklist of United States Trees (native and naturalized) found in the state of Washington, the following are considered separate species for the purpose of harvest classification used in the stumpage value tables:

(a) **Other conifer.** All conifers not separately designated in the stumpage value tables. See WAC 458-40-660.

(b) **Other hardwood.** All hardwoods not separately designated in the stumpage value tables. See WAC 458-40-660.

(c) **Special forest products.** The following are considered to be separate species of special forest products: Christmas trees (various species), posts (various species), western redcedar flatsawn and shingle blocks, western redcedar shake blocks and boards.

(d) **Chipwood.** All timber processed to produce chips or chip products delivered to an approved chipwood destination that has been approved in accordance with the provisions of

WAC 458-40-670 or otherwise reportable in accordance with the provisions of WAC 458-40-670.

(e) **Small logs.** All conifer logs excluding redcedar harvested in stumpage value area((s)) 6 (~~(or 7)~~) generally measuring seven inches or less in scaling diameter, purchased by weight measure at designated small log destinations that have been approved in accordance with the provisions of WAC 458-40-670. Log diameter and length is measured in accordance with the Eastside Log Scaling Rules developed and authored by the Northwest Log Rules Advisory Group, with length not to exceed twenty feet.

(f) **Sawlog.** For purposes of timber harvest in stumpage value area((s)) 6 (~~(and 7)~~), a sawlog is a log having a net scale of not less than 33 1/3% of gross scale, nor less than ten board feet and meeting the following minimum characteristics: Gross scaling diameter of five inches and a gross scaling length of eight feet.

(g) **Piles.** All logs sold for use or processing as piles that meet the specifications described in the most recently published edition of the *Standard Specification for Round Timber Piles (Designation: D 25)* of the American Society for Testing and Materials.

(h) **Poles.** All logs sold for use or processing as poles that meet the specifications described in the most recently published edition of the *National Standard for Wood Poles—Specifications and Dimensions (ANSI 05.1)* of the American National Standards Institute.

(26) **Stumpage.** Timber, having commercial value, as it exists before logging.

(27) **Stumpage value.** The true and fair market value of stumpage for purposes of immediate harvest.

(28) **Stumpage value area (SVA).** An area with specified boundaries which contains timber having similar growing, harvesting and marketing conditions.

(29) **Taxable stumpage value.** The value of timber as defined in RCW 84.33.035(7), and this chapter. Except as provided below for small harvesters and public timber, the taxable stumpage value is the appropriate value for the species of timber harvested as set forth in the stumpage value tables adopted under this chapter.

(a) **Small harvester option.** Small harvesters may elect to calculate the excise tax in the manner provided by RCW 84.33.073 and 84.33.074. The taxable stumpage value must be determined by one of the following methods as appropriate:

(i) **Sale of logs.** Timber which has been severed from the stump, bucked into various lengths and sold in the form of logs has a taxable stumpage value equal to the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber.

(ii) **Sale of stumpage.** When standing timber is sold and harvested within twenty-four months of the date of sale, its taxable stumpage value is the actual purchase price in cash and/or other consideration for the stumpage for the most recent sale prior to harvest. If a person purchases stumpage, harvests the timber more than twenty-four months after purchase of the stumpage, and chooses to report under the small harvester option, the taxable stumpage value is the actual gross receipts for the logs, less any costs associated with har-

vesting and marketing the timber. See WAC 458-40-626 for timing of tax liability.

(b) **Public timber.** The taxable stumpage value for public timber sales is determined as follows:

(i) **Competitive sales.** The taxable stumpage value is the actual purchase price in cash and/or other consideration. The value of other consideration is the fair market value of the other consideration; provided that if the other consideration is permanent roads, the value is the appraised value as appraised by the seller. If the seller does not provide an appraised value for roads, the value is the actual costs incurred by the purchaser for constructing or improving the roads. Other consideration includes additional services required from the stumpage purchaser for the benefit of the seller when these services are not necessary for the harvesting or marketing of the timber. For example, under a single stumpage sale's contract, when the seller requires road abandonment (as defined in WAC 222-24-052(3)) of constructed or reconstructed roads which are necessary for harvesting and marketing the timber, the construction and abandonment costs are not taxable. Abandonment activity on roads that exist prior to a stumpage sale is not necessary for harvesting and marketing the purchased timber and those costs are taxable.

(ii) **Noncompetitive sales.** The taxable stumpage value is determined using the department of revenue's stumpage value tables as set forth in this chapter. Qualified harvesters may use the small harvester option.

(iii) **Sale of logs.** The taxable stumpage value for public timber sold in the form of logs is the actual purchase price for the logs in cash and/or other consideration less appropriate deductions for harvesting and marketing costs. Refer above for a definition of "harvesting and marketing costs."

(iv) **Defaulted sales and uncompleted contracts.** In the event of default on a public timber sale contract, wherein the taxpayer has made partial payment for the timber but has not removed any timber, no tax is due. If part of the sale is logged and the purchaser fails to complete the harvesting, taxes are due on the amount the purchaser has been billed by the seller for the volume removed to date. See WAC 458-40-628 for timing of tax liability.

(30) **Thinning.** Timber removed from a harvest unit located in stumpage value area 1, 2, 3, 4, or 5(~~(or 10)~~):

(a) When the total volume removed is less than forty percent of the total merchantable volume of the harvest unit prior to harvest; and

(b) The harvester leaves a minimum of one hundred undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.

AMENDATORY SECTION (Amending WSR 07-14-094, filed 6/29/07, effective 7/30/07)

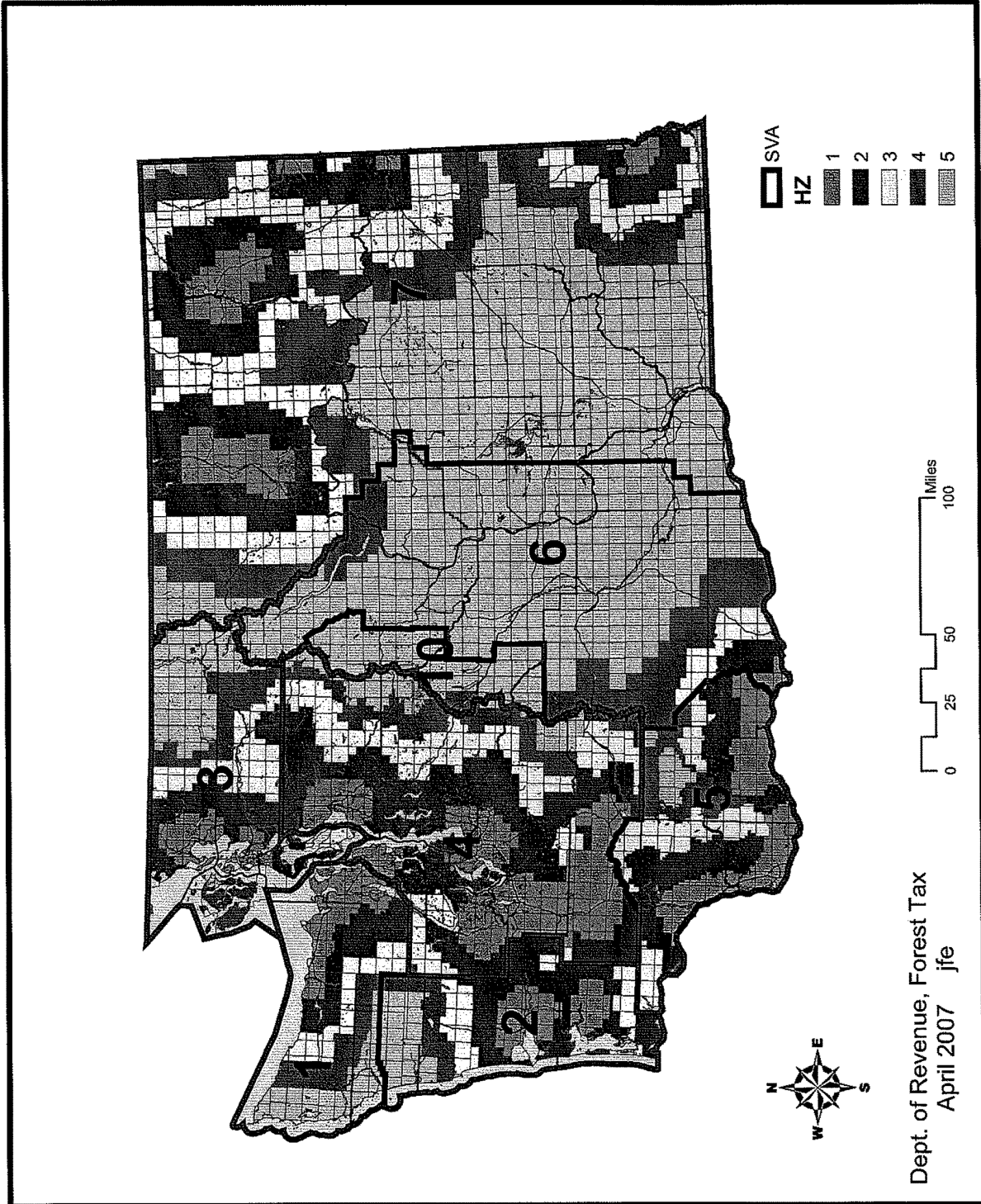
WAC 458-40-640 Timber excise tax—Stumpage value area (map). The stumpage value area and hauling distance zone map contained in this rule must be used to determine the proper stumpage value table and haul zone to be used in calculating the taxable stumpage value of timber harvested from private land.

WAC 458-40-640 Stumpage value area and hauling zone—Map

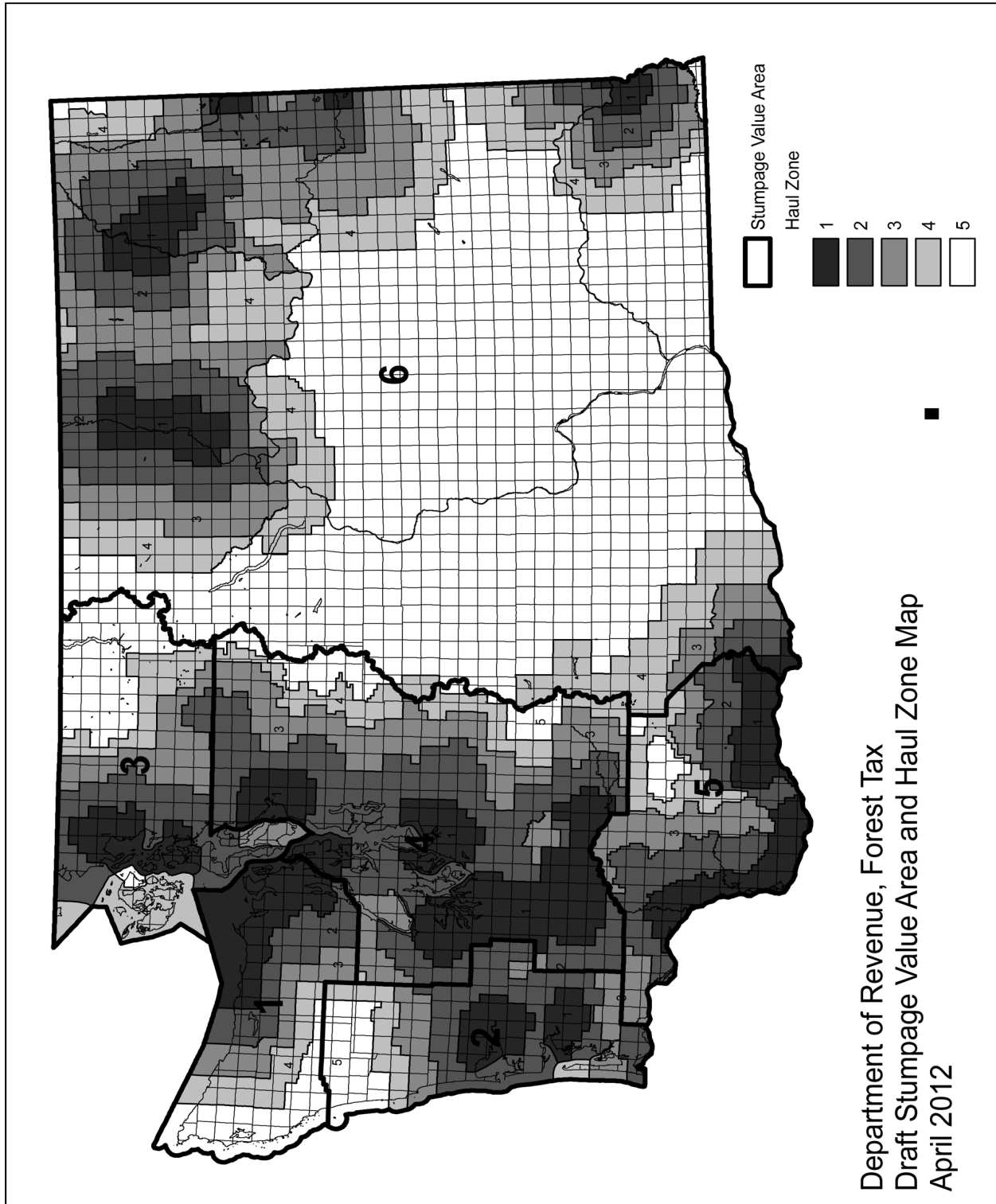
Harvesters may obtain a larger scale map by writing to the Washington State Department of Revenue, Special Programs Division, Forest Tax Section, Post Office Box 47472, Olympia, Washington 98504-7472; or by calling 1-800-548-8829.

Forest Tax SVA and Haul Zone Map

~~((STRICKEN GRAPHIC~~



~~STRICKEN GRAPHIC))~~



AMENDATORY SECTION (Amending WSR 00-19-067, filed 9/19/00, effective 1/1/01)

WAC 458-40-650 Timber excise tax—Timber quality codes defined. The timber quality code numbers for each species of timber shown in the stumpage value tables contained in this chapter are defined as follows:

**TABLE 1—Timber Quality Code Table
Stumpage Value Areas 1, 2, 3, 4, and 5(~~and 10~~)**

Species	Quality Code Number	Log grade specifications ¹
Douglas-fir and Western Larch	1	((Over 50% No. 2 Sawmill and better log grade, and 15% and over Special Mill, No. 1 Sawmill, and better)) All log grades.
((Douglas-fir	2	Over 50% No. 2 Sawmill and better log grade, and less than 15% Special Mill, No. 1 Sawmill, and better log grade.
Douglas-fir	3	25-50% inclusive No. 2 Sawmill and better log grade.
Douglas-fir	4	Less than 25% No. 2 Sawmill and better log grade.))
Western Redcedar and Alaska-Cedar	1	All log grades.
Western Hemlock, True Firs, Lodgepole Pine, Other Conifer, and Spruce	1	((Over 50% No. 2 Sawmill and better log grade, and 5% and over Special Mill, No. 1 Sawmill and better)) All log grades.
((Western Hemlock, True Firs, Other Conifer, and Spruce	2	Over 50% No. 2 Sawmill and better log grade, and less than 5% Special Mill, No. 1 Sawmill and better log grade.
Western Hemlock, True Firs, Other Conifer, and Spruce	3	25-50% inclusive No. 2 Sawmill and better log grade.
Western Hemlock, True Firs, Other Conifer, and Spruce	4	Less than 25% No. 2 Sawmill and better log grade.))
Ponderosa Pine and Western White Pine	1	((Less than 10 logs 16 feet long per thousand board feet Scribner scale.)) All log grades.
((Ponderosa Pine	2	10 or more logs 16 feet long per thousand board feet Scribner scale.
Lodgepole Pine	1	All log grades.))
Red Alder	1	((40% and over No. 3 Sawmill and better)) All log grades.
((Red Alder	2	Less than 40% No. 3 Sawmill and better log grades.))
Black Cottonwood ((and other hardwoods))	1	All log grades.
Other Hardwoods	1	All log grades.
Chipwood	1	All logs that comply with the definition of chipwood in WAC 458-40-610.
Piles	1	All logs that comply with the definition of piles in WAC 458-40-610.
Poles	1	All logs that comply with the definition of poles in WAC 458-40-610.

¹ For information on approved log scaling and grading methods see WAC 458-40-680.

**TABLE 2—Timber Quality Code Table
Stumpage Value Area(~~6~~) 6 (~~and 7~~)**

Species	Quality Code Number	Log grade specifications
Douglas Fir and Western Larch	1	All log grades.
Ponderosa Pine and Western White Pine	1	((Less than 10 logs 16 feet long per thousand board feet Scribner scale.)) All log grades.
((Ponderosa Pine	2	10 or more logs 16 feet long per thousand board feet Scribner scale.
All conifers other than Ponderosa Pine	1	All log sizes.))
Western Redcedar and Alaska Cedar	1	All log grades.
True Firs, Spruce, Hemlock, Lodgepole Pine and all Other Conifer	1	All log grades.
Hardwoods	1	Sawlogs only.
Small logs	1	All conifer logs that comply with the definition of small logs in WAC 458-40-610.
Chipwood	1	All logs that comply with the definition of chipwood in WAC 458-40-610.
Piles	1	All logs that comply with the definition of piles in WAC 458-40-610.
Poles	1	All logs that comply with the definition of poles in WAC 458-40-610.

AMENDATORY SECTION (Amending WSR 12-02-040, filed 12/29/11, effective 1/1/12)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((January)) July 1 through ((June 30)) December 31, 2012:

**((PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 1
January 1 through June 30, 2012**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$397	\$390	\$383	\$376	\$369
		2	397	390	383	376	369
		3	397	390	383	376	369

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Western Redcedar ⁽²⁾	RC	1	743	736	729	722	715
Western Hemlock ⁽²⁾	WH	1	423	416	409	402	395
		2	423	416	409	402	395
		3	423	416	409	402	395
		4	423	416	409	402	395
Red Alder	RA	1	489	482	475	468	461
		2	489	482	475	468	461
Black Cottonwood	BC	1	97	90	83	76	69
Other Hardwood	OH	1	237	230	223	216	209
Douglas-Fir Poles & Piles	DFL	1	735	728	721	714	707
Western Redcedar Poles	RCL	1	1326	1319	1312	1305	1298
Chipwood ⁽⁴⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

- (1) Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Alaska Cedar.
- (3) Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed on this page.
- (4) Stumpage value per ton.
- (5) Stumpage value per cord.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot.

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 2
January 1 through June 30, 2012**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$424	\$417	\$410	\$403	\$396
		2	424	417	410	403	396
		3	424	417	410	403	396
		4	424	417	410	403	396
Western Redcedar ⁽²⁾	RC	1	743	736	729	722	715
Western Hemlock ⁽²⁾	WH	1	425	418	411	404	397
		2	425	418	411	404	397
		3	425	418	411	404	397
		4	425	418	411	404	397
Red Alder	RA	1	489	482	475	468	461
		2	489	482	475	468	461

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Black Cottonwood	BC	1	97	90	83	76	69
Other Hardwood	OH	1	237	230	223	216	209
Douglas-Fir Poles & Piles	DFL	1	735	728	721	714	707
Western Redcedar Poles	RCL	1	1326	1319	1312	1305	1298
Chipwood ⁽⁴⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

- (1) Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Alaska Cedar.
- (3) Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed on this page.
- (4) Stumpage value per ton.
- (5) Stumpage value per cord.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot.

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 3
January 1 through June 30, 2012**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$413	\$406	\$399	\$392	\$385
		2	413	406	399	392	385
		3	413	406	399	392	385
		4	413	406	399	392	385
Western Redcedar ⁽²⁾	RC	1	743	736	729	722	715
Western Hemlock ⁽²⁾	WH	1	422	415	408	401	394
		2	422	415	408	401	394
		3	422	415	408	401	394
		4	422	415	408	401	394
Red Alder	RA	1	489	482	475	468	461
		2	489	482	475	468	461
Black Cottonwood	BC	1	97	90	83	76	69
Other Hardwood	OH	1	237	230	223	216	209
Douglas-Fir Poles & Piles	DFL	1	735	728	721	714	707
Western Redcedar Poles	RCL	1	1326	1319	1312	1305	1298
Chipwood ⁽⁴⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
DF-Christmas-Trees ⁽¹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas-Trees ⁽¹⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska-Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed on this page.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 4**

January 1 through June 30, 2012

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$432	\$425	\$418	\$411	\$404
		2	432	425	418	411	404
		3	432	425	418	411	404
		4	432	425	418	411	404
Lodgepole Pine	LP	1	130	123	116	109	102
Ponderosa Pine	PP	1	156	149	142	135	128
		2	156	149	142	135	128
Western Redcedar ⁽³⁾	RC	1	743	736	729	722	715
Western Hemlock ⁽⁴⁾	WH	1	379	372	365	358	351
		2	379	372	365	358	351
		3	379	372	365	358	351
		4	379	372	365	358	351
Red Alder	RA	1	489	482	475	468	461
		2	489	482	475	468	461
Black Cottonwood	BC	1	97	90	83	76	69
Other Hardwood	OH	1	237	230	223	216	209
Douglas-Fir Poles & Piles	DFL	1	735	728	721	714	707
Western Redcedar Poles	RCL	1	1326	1319	1312	1305	1298
Chipwood ⁽⁵⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF-Christmas-Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas-Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska-Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 5**

January 1 through June 30, 2012

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$405	\$398	\$391	\$384	\$377
		2	405	398	391	384	377
		3	405	398	391	384	377
		4	405	398	391	384	377
Lodgepole Pine	LP	1	130	123	116	109	102
Ponderosa Pine	PP	1	156	149	142	135	128
		2	156	149	142	135	128
Western Redcedar ⁽³⁾	RC	1	743	736	729	722	715
Western Hemlock ⁽⁴⁾	WH	1	395	388	381	374	367
		2	395	388	381	374	367
		3	395	388	381	374	367
		4	395	388	381	374	367
Red Alder	RA	1	489	482	475	468	461
		2	489	482	475	468	461
Black Cottonwood	BC	1	97	90	83	76	69
Other Hardwood	OH	1	237	230	223	216	209
Douglas-Fir Poles & Piles	DFL	1	735	728	721	714	707
Western Redcedar Poles	RCL	1	1326	1319	1312	1305	1298
Chipwood ⁽⁵⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF-Christmas-Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas-Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska-Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 6
January 1 through June 30, 2012**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$140	\$133	\$126	\$119	\$112
Lodgepole Pine	LP	1	130	123	116	109	102
Ponderosa Pine	PP	1	156	149	142	135	128
		2	156	149	142	135	128
Western Redcedar ⁽³⁾	RC	1	457	450	443	436	429
True Firs and Spruce ⁽⁴⁾	WH	1	128	121	114	107	100
Western White Pine	WP	1	158	151	144	137	130
Hardwoods	OH	1	86	79	72	65	58
Western Redcedar Poles	RCL	1	457	450	443	436	429
Small Logs ⁽⁵⁾	SML	1	20	19	18	17	16
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

- ⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- ⁽²⁾ Includes Western Larch.
- ⁽³⁾ Includes Alaska Cedar.
- ⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- ⁽⁵⁾ Stumpage value per ton.
- ⁽⁶⁾ Stumpage value per cord.
- ⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
- ⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- ⁽⁹⁾ Stumpage value per lineal foot.

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 7
January 1 through June 30, 2012**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$140	\$133	\$126	\$119	\$112
Lodgepole Pine	LP	1	130	123	116	109	102
Ponderosa Pine	PP	1	156	149	142	135	128
		2	156	149	142	135	128
Western Redcedar ⁽³⁾	RC	1	457	450	443	436	429
True Firs and Spruce ⁽⁴⁾	WH	1	128	121	114	107	100
Western White Pine	WP	1	158	151	144	137	130
Hardwoods	OH	1	86	79	72	65	58

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Western Redcedar Poles	RCL	1	457	450	443	436	429
Small Logs ⁽⁵⁾	SML	1	20	19	18	17	16
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

- ⁽⁴⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- ⁽²⁾ Includes Western Larch.
- ⁽³⁾ Includes Alaska Cedar.
- ⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- ⁽⁵⁾ Stumpage value per ton.
- ⁽⁶⁾ Stumpage value per cord.
- ⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
- ⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- ⁽⁹⁾ Stumpage value per lineal foot.

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 10
January 1 through June 30, 2012**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$418	\$411	\$404	\$397	\$390
		2	418	411	404	397	390
		3	418	411	404	397	390
		4	418	411	404	397	390
Lodgepole Pine	LP	1	130	123	116	109	102
Ponderosa Pine	PP	1	156	149	142	135	128
		2	156	149	142	135	128
Western Redcedar ⁽³⁾	RC	1	729	722	715	708	701
Western Hemlock ⁽⁴⁾	WH	1	365	358	351	344	337
		2	365	358	351	344	337
		3	365	358	351	344	337
		4	365	358	351	344	337
Red Alder	RA	1	475	468	461	454	447
		2	475	468	461	454	447
Black Cottonwood	BC	1	83	76	69	62	55
Other Hardwood	OH	1	223	216	209	202	195
Douglas-Fir Poles & Piles	DFL	1	721	714	707	700	693
Western Redcedar Poles	RCL	1	1312	1305	1298	1291	1284
Chipwood ⁽⁵⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136

Species Name	Species Code	Timber Quality Code Number	Hauling Distance-Zone Number				
			1	2	3	4	5
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas-Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas-Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

- (+) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska-Cedar.
- (4) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (5) Stumpage value per ton.
- (6) Stumpage value per cord.
- (7) Stumpage value per 8 lineal feet or portion thereof.
- (8) Stumpage value per lineal foot.)

PROPOSED STUMPAGE VALUE TABLE
Washington State Department of Revenue
STUMPAGE VALUE TABLE
 July 1 through December 31, 2012

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Starting July 1, 2012, there are no separate Quality Codes per Species Code.

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$348	\$341	\$334	\$327	\$320
		2	438	431	424	417	410
		3	384	377	370	363	356
		4	397	390	383	376	369
		5	385	378	371	364	357
		6	163	156	149	142	135
Western Hemlock and Other Conifer ⁽³⁾	WH	1	352	345	338	331	324
		2	400	393	386	379	372
		3	400	393	386	379	372
		4	365	358	351	344	337
		5	372	365	358	351	344
		6	146	139	132	125	118
Western Red-cedar ⁽⁴⁾	RC	1-5	727	720	713	706	699
		6	441	434	427	420	413
Ponderosa Pine ⁽⁵⁾	PP	1-6	180	173	166	159	152
Red Alder	RA	1-5	515	508	501	494	487
Black Cottonwood	BC	1-5	88	81	74	67	60
Other Hardwood	OH	1-5	229	222	215	208	201
		6	113	106	99	92	85
Douglas-Fir Poles & Piles	DFL	1-5	800	793	786	779	772
Western Red-cedar Poles	RCL	1-5	1328	1321	1314	1307	1300
		6	723	716	709	702	695
Chipwood ⁽⁶⁾	CHW	1-5	23	22	21	20	19

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
		6	13	12	11	10	9
Small Logs ⁽⁶⁾	SML	6	23	22	21	20	19
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-6	164	157	150	143	136
Posts ⁽⁸⁾	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-6	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine.
- (6) Stumpage Value per ton.
- (7) Stumpage Value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.
- (9) Stumpage Value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber(---)**—Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be

processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber**—Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ~~(January)~~ July 1 through ~~(June 30)~~ December 31, 2012:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, and 5 ~~(and 4)~~
~~January)~~ July 1 through ~~(June 30)~~ December 31, 2012

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$50.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Area ~~(s)~~ **6** ~~(and 7)~~
~~January)~~ July 1 through ~~(June 30)~~ December 31, 2012

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00

II. Logging conditions

Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00

Note: A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.

III. Remote island adjustment:

For timber harvested from a remote island	-\$50.00
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TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
((Class-1-))	((SVA's)) SVAs 1 through 5 (and 4)) only:	\$12.00
((Class-2-))	SVA 6 and 7	(\$0.00)

Note: This adjustment only applies to published MBF sawlog values.

(4) Damaged timber. Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

AMENDATORY SECTION (Amending WSR 06-02-007, filed 12/22/05, effective 1/22/06)

WAC 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods—Sample scaling—Conversions. (1) **Introduction.** The acceptable log scaling and grading standard for stumpage value areas 1, 2, 3, 4, and 5(~~(-and 10)~~) is the Scribner Decimal C log rule as described in the most current edition of the "Official Log Scaling and Grading Rules" developed and authored by the Northwest Log Rules Advisory Group. The acceptable log scaling standard for stumpage value area(~~(s)~~) 6 (~~(and 7)~~) is the Scribner Decimal C log rule described in the most current edition of the "Eastside Log Scaling Handbook" as published by the Northwest Log Rules Advisory Group, except that timber harvested in stumpage value area(~~(s)~~) 6 (~~(and 7)~~) must be scaled using the current regional taper rules at the point of origin.

(2) **Special services scaling.** Special services scaling as described in the "Official Log Scaling and Grading Rules" developed and authored by the Northwest Log Rules Advisory Group may not be used for tax reporting purposes without prior written approval of the department of revenue.

(3) **Sample scaling.** Sample scaling may not be used for tax reporting purposes without prior written approval of the department of revenue. To be approved, sample scaling must be in accordance with the following guidelines:

(a) Sample selection, scaling, and grading must be conducted on a continuous basis as the unit is harvested.

(b) The sample must be taken in such a manner to assure random, unbiased sample selection in accordance with accepted statistical tests of sampling.

(c) The sample used to determine total volume, species, and quality of timber harvested for a given reporting period must have been taken during that period.

(d) Sample frequency must be large enough to meet board foot variation accuracy limits of plus or minus two and five-tenths percent standard error at the ninety-five percent confidence level.

(e) Harvesters, or a purchaser with an approved sample scaling method, must maintain sufficient supporting documentation to allow the department of revenue to verify source data, and test statistical reliability of sample scale systems.

(f) Exceptions: Sampling designs and accuracy standards other than those described herein may only be used with the prior written approval of the department of revenue.

(4) **Conversions to Scribner Decimal C Scale.** The following definitions, tables, and conversion factors must be used in determining taxable volume for timber harvested that was not originally scaled by the Scribner Decimal C Log Rule. Conversion methods other than those listed are not to be used for tax reporting purposes without prior written approval of the department of revenue. Harvesters who wish to use a method of conversion other than those listed below must obtain written approval from the department of revenue before harvesting. Purchasers may obtain written approval of a sample scaling method from the department of revenue. The department will maintain a list of purchasers with an approved sample scaling method. A harvester may obtain this list and a summary of the approved method for specific purchasers from the department of revenue. If a harvester has not obtained approval of a sample scaling method before harvesting, the harvester may use a purchaser's approved sample scaling method. If the harvester, or purchaser, fails to use an approved sample scaling method or other method of conversion approved by these rules to set the purchase price, the department will establish its own method, as the circumstances require, to determine a reasonable estimate of the volume of timber sold.

(a) **Weight measurement.** If the sole unit of measure used to set the purchase price for logs from harvest units (~~(that meet the definition of the lowest quality code for each species)~~) was weight, and the harvester does not use an approved method of sample scaling to determine volume for the stumpage value tables, the following tables must be used for converting to Scribner Decimal C, if the harvest volume per species meets the definition listed in the table. If weight is the sole measure used for a harvest unit (~~(with quality codes other than the lowest)~~) and the harvest volume per species does not meet the definition listed in the table below, the department will establish its own method, as the circumstances require, to determine a reasonable estimate of the volume of timber sold. Harvesters must keep records to substantiate the species and quality codes reported. For tax reporting purposes, a ton equals 2,000 pounds.

(Stumpage Value Areas 1, 2, 3, 4, & 5((- & 10))) BOARD FOOT WEIGHT SCALE FACTORS (TONS/MBF)				
Species	Quality code			
	1	(2)	3	4)
Douglas-fir ¹	((NA) <u>7.50</u>)	((NA)	NA	7.50))
Western Hemlock ²	((NA) <u>8.25</u>)	((NA)	NA	8.25))
Western Redcedar ³	7.0			
Red Alder ⁴	((NA) <u>7.80</u>)	((7.8)		
Chipwood	9.0			

- 1 Includes Douglas-fir, Western Larch, Western White Pine and Sitka Spruce. Only for volume including less than 25% No. 2 sawmill or better log grades.
- 2 Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, Lodgepole Pine and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir." Only for volume including less than 25% No. 2 sawmill or better log grades.
- 3 Includes Alaska-cedar.
- 4 Maple, Black Cottonwood and other hardwoods. Only for volume including less than 40% No. 3 sawmill or better log grades.

(Stumpage Value Area((s) 6 ((& 7))) BOARD FOOT WEIGHT SCALE FACTORS (TONS/MBF)		
Species	Quality code	
	1	((2))
Ponderosa Pine ¹	((NA)) 6.50	((6.50))
Douglas-fir ^{(1) 2}	5.50	
Lodgepole Pine	6.0	
Western Hemlock ^{(2) 2}	5.50	
Englemann Spruce	4.50	
Western Redcedar ^{(3) 4}	4.50	
Chipwood	9.0	
Small Logs	6.50	

- ¹ Only for volume with 10 or more logs 16 feet long per thousand board feet Scribner scale.
- ² Includes Western Larch.
- ^{(2) 2} Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- ^{(3) 4} Includes Alaska-cedar.

(b) **Cord measurement.** For the purposes of converting cords into Scribner volume:

(i) In stumpage value areas 1, 2, 3, 4, and 5((~~and 10~~)) logs with an average scaling diameter of 8 inches and larger must be converted to Scribner volume using 400 board feet per cord. Logs having an average scaling diameter of less than 8 inches must be converted to Scribner volume using 330 board feet per cord.

(ii) In stumpage value area((s)) 6 ((~~and 7~~)) logs with an average scaling diameter of 8 inches and larger must be converted to Scribner volume using 470 board feet per cord. Logs having an average scaling diameter of less than 8 inches must be converted to Scribner volume using 390 board feet per cord.

(iii) A cord of Western Redcedar shake or shingle blocks must be converted to Scribner volume using 600 board feet per cord.

(iv) Firewood must be converted at a rate of 3 tons per cord.

(c) **Cants or lumber from portable mills.** To convert from lumber tally to Scribner volume:

(i) In stumpage value areas 1, 2, 3, 4, and 5((~~and 10~~)) multiply the lumber tally for the individual species by 75%, and round to the nearest one thousand board feet (MBF); or

(ii) In stumpage value area((s)) 6 ((~~and 7~~)) multiply the lumber tally for the individual species by 88%, and round to the nearest one thousand board feet (MBF).

(d) **Log scale conversion.** Timber harvested in stumpage value areas 1, 2, 3, 4, and 5((~~and 10~~)) and which has been scaled by methods and procedures published in the "Eastside Log Scaling Handbook" must have the volumes reported reduced by eighteen percent. Timber harvested in stumpage value area((s)) 6 ((~~and 7~~)) and which has been scaled by methods and procedures published in the "Official Log Scaling and Grading Rules" developed and authored by the Northwest log rules advisory group, must have the volumes reported increased by eighteen percent.

(e) **Timber pole and piling volume tables.** Harvesters of poles must use the following tables to determine the Scribner board foot volume for each pole length and class:

Total Scribner Board Foot Volume Stumpage Value Areas 1, 2, 3, 4, <u>and 5((and 10))</u>																	
Length	Pole Class ¹															Piling Class ²	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A	B
20							50	50	40	40	30	30	20	20	20	80	70
25							60	60	50	50	40	40	30	30	30	100	90
30							110	70	60	60	50	50	40	40		130	110
35					160	160	130	100	80	80	60	60	50			130	110
40			240	200	180	180	150	120	120	90	70	60				150	120
45	380	340	340	280	230	230	190	150	120	120	90	90				150	120
50	430	370	370	300	260	260	210	160	140	140	100					160	140
55	470	410	410	330	280	280	230	180	150	150						180	150
60	540	470	470	410	340	340	290	220	190	190						190	160
65	610	520	520	420	380	380	320	260	210	210						210	180
70	650	560	560	480	400	400	350	270	230	230						230	190
75	700	600	600	520	520	520	440	290	250							230	200
80	820	700	700	600	600	540	440	360	290							250	210
85	910	800	800	660	660	660	570	490	360							260	210
90	1080	930	930	820	820	690	590	490	400							260	220
95	1170	1000	1000	870	870	750	640	540								290	240
100	1190	1030	1030	900	900	760	660	550								310	250

Total Scribner Board Foot Volume Stumpage Value Areas 1, 2, 3, 4, and 5(and 10)																	
Length	Pole Class ¹															Piling Class ²	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A	B
105	1310	1160	1160	1000	1000	860	740	610								330	270
110	1370	1220	1220	1050	1050	910	780	650								380	300
115	1440	1280	1280	1100	1100	960	860	680								400	310
120	1660	1460	1460	1300	1300	1140	970	820								500	400
125	1840	1600	1600	1410	1410	1250	1080	930									
130	1920	1680	1680	1490	1490	1310	1120	970									

¹ Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976, under American National Standard Institute, Inc. codified ANSI 05.1-1972.

² Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

Total Scribner Board Foot Volume Stumpage Value Area(s) 6 (and 7)																	
Length	Pole Class ¹															Piling Class ²	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A	B
20							70	60	50	50	30	30	20	20	20	90	70
25							80	70	50	50	40	40	30	30	20	100	80
30							110	90	60	60	50	50	50	40		130	110
35					190	160	140	100	100	70	60	60	50			140	100
40				240	240	200	170	120	110	100	70	70				140	100
45	390	330	330	270	270	220	180	150	110	110	80	70				150	110
50	460	390	390	340	340	280	240	190	150	150	120					190	150
55	510	430	430	370	360	300	250	190	150	150						190	150
60	610	530	530	440	440	380	310	240	200	200						240	200
65	650	570	570	490	480	410	350	280	220	220						240	200
70	750	650	650	550	470	470	410	320	260	260						260	210
75	810	700	700	600	600	500	440	340	270							270	220
80	960	830	830	710	710	610	510	420	340							220	220
85	1020	870	870	760	760	640	550	450	360							300	240
90	1110	970	970	840	840	720	620	500	420							280	280
95	1160	1010	1010	870	870	740	640	510								360	280
100	1380	1210	1210	1060	1060	910	780	650								360	280
105	1430	1250	1250	1100	1100	940	820	690								400	300
110	1580	1390	1390	1220	1220	1070	920	770								460	340
115	1660	1470	1470	1280	1280	970	810	680								470	360
120	1880	1680	1680	1480	1480	1290	1130	950								560	450
125	1910	1690	1690	1490	1490	1140	970	810									
130	2170	1920	1920	1710	1710	1510	1320	1140									

¹ Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976, under American National Standard Institute, Inc. codified ANSI 05.1-1972.

² Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

WSR 12-14-073

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed July 2, 2012, 11:43 a.m., effective August 2, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-282-990(5), Sanitary control of shellfish—Fees—Commercial geoduck paralytic shellfish poisoning (PSP) testing. The rule equitably assesses the costs of commercial geoduck PSP testing based on the number of tests done the previous year. The testing is essential to public health. It is the only way to know if dangerous levels of PSP

exist in commercial geoduck, and ensure toxic shellfish do not reach consumers.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-990.

Statutory Authority for Adoption: RCW 43.70.250.

Adopted under notice filed as WSR 12-10-096 on May 2, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 2, 2012.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 11-19-011, filed 9/7/11, effective 10/8/11)

WAC 246-282-990 Fees. (1) The required annual shellfish operation license fees for shellstock shippers and shucker-packers due October 1, 2011, shall be reduced by twenty-five percent of the annual shellfish operation license fees in subsection (2) of this section. Beginning July 1, 2012, and for every subsequent year, the full annual shellfish operation license fees in subsection (2) of this section shall be assessed.

(2) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(3) The fee for each export certificate is \$20.00.

(4) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category		
Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$173
Harvester	3 or more	\$259
Shellstock Shipper	≤ 2	\$195
0 - 49 acres		
Shellstock Shipper	3 or more	\$292
0 - 49 acres		
Shellstock Shipper	N/A	\$468
50 or greater acres		

Fee Category		
Type of Operation	Number of Harvest Sites	Fee
Shucker-Packer	≤ 2	\$354
(plants < 2000 ft ²)		
Shucker-Packer	3 or more	\$533
(plants < 2000 ft ²)		
Shucker-Packer	≤ 2	\$429
(plants 2000 - 5000 ft ²)		
Shucker-Packer	3 or more	\$644
(plants 2000 - 5000 ft ²)		
Shucker-Packer	N/A	\$1,189
(plants > 5000 ft ²)		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(5) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	\$(9,616)) <u>9,433</u>
<u>Discovery Bay Shellfish</u>	<u>\$401</u>
Jamestown S'Klallam Tribe	\$(1,224)) <u>3,412</u>
Lower Elwha Klallam Tribe	\$(4,274)) <u>4,817</u>
(Nisqually Indian Tribe	\$(3,968))
Port Gamble S'Klallam Tribe	\$(3,053)) <u>7,626</u>
Puyallup Tribe of Indians	\$(6,868)) <u>6,221</u>
Seattle Shellfish	\$(1,374)) <u>201</u>
Squaxin Island Tribe	\$(3,968)) <u>1,605</u>
Suquamish Tribe	\$(16,026)) <u>17,261</u>
Swinomish Tribe	\$(458)) <u>1,003</u>
(SYS Enterprises	\$(614))
Taylor Shellfish	\$(2,900)) <u>602</u>
Tulalip Tribe	\$(3,663)) <u>5,418</u>

(6) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(7) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

WSR 12-14-074
PERMANENT RULES
SECRETARY OF STATE

(Elections Division)

[Filed July 2, 2012, 11:46 a.m., effective August 2, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposed rules address the information required to be available on-line, precinct committee officer elections, minor party presidential nominations, ballot drop boxes, voting centers, processing mail-in ballots, certifying elections, voter registration, and initiatives and referenda.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-235-050, 434-264-020, 434-264-040 and 434-264-050; and amending WAC 434-215-130, 434-230-100, 434-250-100, 434-250-105, 434-250-110, 434-250-120, 434-261-050, 434-262-010, 434-262-070, 434-262-030, 434-264-010, 434-264-030, 434-324-026, 434-324-108, 434-324-036, and 434-379-008.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 12-11-118 on May 22, 2012.

Changes Other than Editing from Proposed to Adopted Version: The changes to confirmation notices in WAC 434-324-036 and 434-324-087 will be phased-in to allow county election offices to use their existing stock of printed confirmation notices until December 31, 2012.

Procedural steps prior to a recount, previously listed in WAC 434-264-010(3), have been removed because they are addressed in WAC 434-261-140.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 5, Amended 15, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 16, Repealed 4.

Number of Sections Adopted Using Negotiated Rule Making: New 6, Amended 16, Repealed 4; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 2, 2012.

Steve Excell
Assistant Secretary of State

NEW SECTION

WAC 434-208-160 On-line information. The secretary of state and each county auditor must provide information on-line that includes, at a minimum, how to:

- (1) Register to vote using a paper or on-line application;
- (2) Confirm a registration status;
- (3) Request a ballot or replacement ballot;
- (4) For service and overseas voters, receive a ballot electronically;
- (5) Update a residential address or mailing address;
- (6) Contact the elections office by phone, fax, e-mail, mailing address, and physical address;
- (7) Obtain information about the next election;
- (8) For service or overseas voters, return a signed declaration and voted ballot electronically;
- (9) Confirm that a voted ballot has been received; and
- (10) Obtain election results.

NEW SECTION

WAC 434-215-021 Declaration of candidacy—Precinct committee officer. Declarations of candidacy for the office of precinct committee officer shall be in substantially the following form:

Declaration of Candidacy

Precinct Committee Officer

instructions File this form with your county elections department.
Note: This document becomes public record once filed.

office information member of the Democratic Party
 Republican Party
 precinct representing (name / number)

personal information as registered to vote
 first name middle last
 date of birth (mm / dd / yyyy) phone number
 residential address city / ZIP

ballot information
 exact name I would like printed on the ballot (*only contested races will appear on the ballot*)

contact information
 mailing address (*if different from residential address*) city / ZIP
 email address phone number

oath
 I declare that the above information is true, that I am a registered voter residing at the residential address and precinct listed above, and that I am a candidate for Precinct Committee Officer for the party and precinct identified above.
 Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.
 sign here [] date here []

for office use only
 voter registration number date
 precinct verified office code
 staff

03/2012

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-215-130 Minor political party candidates and independent candidates. (1) In the election system enacted as chapter 2, Laws of 2005, there is no distinction between major party candidates, minor party candidates, or independent candidates filing for partisan congressional, state, or county office. All candidates filing for these partisan offices have the same filing and qualifying requirements. All candidates for partisan office have the option of stating on the ballot their preference for a political party, or stating no party preference. The party preference information plays no role in determining how candidates are elected to public office.

(2) The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates for partisan office to conduct nominating conventions and collect a sufficient number of signatures of registered voters do not apply to candidates filing for partisan congressional, state, or county office. The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates only apply to candidates for president and vice-president of the United States. If two or more certificates of nomination are filed purporting to nominate the same candidates for president and vice-president by two different minor political parties, or both by a party and as an independent candidate, the first valid certificate of nomination filed with the secretary of state shall be accepted and subsequent certificates must be rejected.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-230-100 Political party precinct committee officer. ((The method for electing precinct committee officers on party ballots established in chapter 271, Laws of 2004 (the pick-a-party primary), was repealed by chapter 2, Laws of 2005. The method for electing precinct committee officers on a top two primary ballot under chapter 2, Laws of 2005 (the top two primary), was declared unconstitutional by the U.S. District Court for the Western District of Washington in *Washington State Republican Party, et al. v. State of Washington, et al.*, Case No. C05-0927-JCC (January 11, 2011). "The central holding is that the political parties, not the government, are free to define the scope of their membership." Consequently, precinct committee officer elections are no longer conducted by state or county government. As private organizations, the political parties determine how to conduct their internal affairs, including selection of their officers.)) (1) The election of major political party precinct committee officers is established in RCW 29A.52--- (section 3, chapter 89, Laws of 2012) and RCW 29A.80.051.

(2) The election of precinct committee officer is an intra-party election; candidates compete against other candidates in the same political party.

(a) If only one candidate files for a position, that candidate is deemed elected without appearing on the ballot and the county auditor shall issue a certificate of election.

(b) If more than one candidate files for a position, the contested race must appear on the ballot at the primary and the candidate who receives the most votes is declared elected.

(c) If no candidates file during the regular filing period, the race does not appear on the ballot and the position may be filled by appointment pursuant to RCW 29A.28.071.

(d) No write-in line may be printed on the ballot for a contested race, and no write-in votes may be counted.

(3) If both major political parties have contested races on the ballot in the same precinct, the political party that received the highest number of votes from the electors of this state for the office of president at the last presidential election must appear first, with the other political party appearing second. Within each party, candidates shall be listed in the order determined by lot.

(4)(a) The position of political party precinct committee officer must appear following all measures and public offices.

(b) The following explanation must be printed before the list of candidates: "For this office only: In order to vote for precinct committee officer, a partisan office, you must affirm that you are a Democrat or a Republican and may vote only for one candidate from the party you select. Your vote for a candidate affirms your affiliation with the same party as the candidate. This preference is private and will not be matched to your name or shared."

(c)(i) If all candidates are listed under one heading, the applicable party abbreviation "Dem" or "Rep" must be printed next to each candidate's name, with the first letter of the abbreviation capitalized. For example:

John Smith Dem

Jane Doe Dem

(ii) If candidates are listed under a major political party heading, the applicable heading of either "democratic party candidates" or "republican party candidates" must be printed above each group of candidates. The first letter of each word must be capitalized.

(d) One of the following statements, as applicable, must be printed directly below each candidate's name: "I affirm I am a Democrat." or "I affirm I am a Republican."

(5) A voter may vote for only one candidate, regardless of party, for precinct committee officer. If a voter votes for more than one candidate, the votes must be treated as over-votes.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-235-050 On-line information.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-100 Ballot deposit sites. (1) If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

(a) If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of

the county auditor's office or persons appointed by the auditor. If a deposit site is staffed by two or more persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of their duties. Staffed deposit sites open on election day must be open until 8:00 p.m. Staffed deposit sites may be open according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place and refer the ballot to the canvassing board.

(b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) Ballot boxes must be secured at all times, with seal logs that document each time the box is opened and by whom. Ballots must be placed into secured transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or secured to prevent the deposit of additional ballots.

(3) Within twenty-five feet of a ballot deposit site that is not located within a voting center, no person may electioneer, circulate campaign material, solicit petition signatures, or interfere with or impede the voting process. Whenever it is necessary to maintain order around a ballot deposit site, the county auditor may contact a law enforcement agency for assistance.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-105 Voting centers. (1) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be an accessible location. "Accessible" means the combination of factors which create an environment free of barriers to the mobility or functioning of voters. The environment consists of the routes of travel to and through the buildings or facilities used for voting. The Americans with Disabilities Act Checklist for Polling Places shall be used when determining the accessibility of a voting center. A voting center is fully accessible if all responses in each category are "Yes";

(b) Be marked with signage outside the building indicating the location as a place for voting;

(c) Issue ballots that include a declaration in the ballot materials;

(d) Offer disability access voting in a location or manner that provides for voter privacy. For each voting center, the county auditor must have a contingency plan to accommodate accessible voting in the event that an accessible voting unit malfunctions or must be removed from service;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

~~(f) ((For voters voting on a direct recording electronic voting device, require the voter to provide photo identification, consistent with chapter 10, Laws of 2011, section 43(7), and to sign and date the declaration in WAC 434-230-015. The county auditor is not required to compare the signature on the declaration to the signature in the voter registration record if the voter provided identification. To prevent double voting, the voting center must have electronic or telephonic access to the voter registration system, consistent with WAC 434-250-095;))~~ Have electronic or telephonic access to the voter registration system, consistent with WAC 434-250-095, if the voting center offers voting on a direct recording electronic voting device. The voter must either:

(i) Provide photo identification, consistent with RCW 29A.40.160; or

(ii) Sign the ballot declaration required by WAC 434-230-015, and the signature on the declaration must be verified against the signature in the voter registration record before the voter may vote on a direct recording electronic voting device;

(g) Provide either a voters' pamphlet or sample ballots;

(h) Provide voter registration forms;

(i) Display a HAVA voter information poster;

(j) Display the date of that election;

(k) During a primary that includes a partisan office, display the notice provided in WAC 434-230-015 (3)(j), and during a general election that includes a partisan office, display the notice provided in WAC 434-230-015 (3)(k). The party preference notices may also be posted on-screen in direct recording electronic voting devices;

(l) Provide instructions on how to properly mark the ballot; and

(m) Provide election materials in alternative languages if required by the Voting Rights Act.

(2) Where it appears that a particular voter is having difficulty casting his/her vote, and as a result, is impeding other voters from voting, the staff may provide assistance to that voter in the same manner as provided by law for those voters who request assistance. Where it appears that a voter is impeding other voters from voting to simply cause delay, the staff shall ask the voter to expedite the voting process. In the event the voter refuses to cooperate, the staff shall, whenever practical, contact the county auditor, who may request assistance from the appropriate law enforcement agencies if he or she deems such action necessary.

(3) At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or secured to prevent the deposit of additional ballots. Voted ballots, including provisional, mail-in, and direct recording electronic and paper records, must be placed into secured transport carriers for return to the county auditor's office or another designated location.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-110 Processing ballots. (1) "Initial processing" means all steps taken to prepare ballots for tabulation. Initial processing includes, but is not limited to:

(a) Verification of the signature and postmark on the ballot declaration;

(b) Removal of the security envelope from the return envelope;

(c) Removal of the ballot from the security envelope;

(d) Manual inspection for damage, write-in votes, and incorrect or incomplete marks;

(e) Duplication of damaged and write-in ballots;

(f) Scanning and resolution of ballots on a digital scan voting system; and

(g) Other preparation of ballots for final processing.

(2) "Final processing" means the reading of ballots by an ~~((electronic vote tallying))~~ optical scan voting system for the purpose of producing returns of votes cast, but does not include tabulation.

(3) "Tabulation" means the production of returns of votes cast for candidates or ballot measures in a form that can be read by a person, whether as precinct totals, partial cumulative totals, or final cumulative totals.

(4) Prior to initial processing of ballots, the county auditor shall notify the county chair of each major political party of the time and date on which processing shall begin, and shall request that each major political party appoint official observers to observe the processing and tabulation of ballots. If any major political party has appointed observers, such observers may be present for initial processing, final processing, or tabulation, if they so choose, but failure to appoint or attend shall not preclude the processing or tabulation of ballots.

(5) Initial processing of voted ballots, which may include scanning and resolving ballots on a digital scan voting system, may begin as soon as voted ballots are received. All ballots must be kept in secure storage until final processing. Secure storage must employ the use of numbered seals and logs, or other security measures which will detect any inappropriate or unauthorized access to the secured ballot materials when they are not being prepared or processed by authorized personnel. The county auditor must ensure that all security envelopes and return envelopes are empty, either by a visual inspection of the punched hole to confirm that no ballots or other materials are still in the envelopes, or by storing the envelopes with a tie, string, or other object through the holes.

(6) Final processing of voted ballots, which may include scanning ballots on an optical scan voting system, may begin after 7:00 a.m. on the day of the election. Final processing may begin after 7:00 a.m. the day before the election if the county auditor has submitted an approved security plan to the secretary of state that prevents tabulation until after 8:00 p.m. on the day of the election.

(7) Tabulation may begin after 8:00 p.m. on the day of the election.

(8) In counties tabulating ballots on an optical scan vote tallying system, the vote tallying system must reject all overvotes and blank ballots.

(a) All rejected ballots shall be outstacked for additional manual inspection.

(b) The outstacked ballots shall be inspected in a manner similar to the original inspection with special attention given to stray marks, erasures, and other conditions that may have caused the vote-tallying device to misread and reject the ballot.

(c) If inspection reveals that a ballot must be duplicated in order to be read correctly by the vote tallying system, the ballot must be duplicated.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-120 Verification of the signature and return date. (1) A mail ballot shall be counted (~~((only))~~) if:

(a) The ballot declaration is signed with a valid signature;

(b) The signature has been verified pursuant to WAC 434-379-020, or if the voter is unable to sign his or her name, two other persons have witnessed the voter's mark; and

(c)(i) The envelope is postmarked not later than the day of the election and received not later than the day before certification of the election;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) The ballot of a service or overseas voter received by fax or e-mail is received no later than 8:00 p.m. on election day.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) The signature on the ballot declaration must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on a ballot declaration may not be rejected merely because the signature is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

(4) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-261-050 Unsigned ballot declaration or mismatched signatures. (1) If a voter neglects to sign a ballot declaration, signs with a mark and fails to have two witnesses attest to the signature, or signs but the signature on the ballot declaration does not match the signature on the voter registration record, the county auditor shall notify the voter by first class mail of the correct procedures for curing the signature. If the ballot is received during the last three business days before the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded by the last three business days before the final meeting of the canvassing board, the county auditor must attempt to notify the voter by telephone using information in the voter registration record.

(2) If the voter neglects to sign, or signs with a mark and fails to have two witnesses attest to the signature, the voter must either:

(a) Appear in person and sign the declaration no later than the day before certification of the primary or election; or

(b) Sign a copy of the declaration (~~((provided by the auditor))~~), or mark the declaration in front of two witnesses, and return it to the county auditor no later than the day before certification of the primary or election.

(3) If the signature on the declaration does not match the signature on the voter registration record, the voter must either:

(a) Appear in person and sign a new registration form no later than the day before certification of the primary or election. The updated signature provided on the (~~((new))~~) registration form becomes the signature (~~((on))~~) in the voter registration record for the current election and future elections; or

(b) Sign a (~~((copy of the declaration provided by the auditor, and provide a photocopy of a valid government or tribal identification that includes the voter's current signature. The signature on the copy of the declaration must match the signature on the identification, and both of those signatures must match the signature on the ballot declaration. The voter must return the signed declaration and identification))~~) signature update form that includes both the ballot declaration required by WAC 434-230-015 and the voter registration oath required by RCW 29A.08.230, and return it to the county auditor no later than the day before certification of the primary or election. The (~~((county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections; or~~

(~~((e) Sign a copy of the declaration provided by the auditor in front of two witnesses who attest to the signature. The signature on the copy of the declaration must match the signature on the ballot declaration. The voter must return the signed declaration to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections))~~) signature on the signature update form must match the signature on the returned ballot declaration. The signature provided on the signature update form becomes the signature in the voter registration record for the current election and future elections.

(4)(a) If the signature on the declaration does not match the signature on the registration record because the last name is different, the ballot may be counted as long as the first name and handwriting (~~((is))~~) are clearly the same. If it appears that the voter has changed his or her name, and the information required under RCW 29A.08.440 to complete a name change is not provided or is illegible, the county auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(b) If the signature on (~~((a))~~) the ballot declaration does not match the signature on the registration record because the voter (~~((used))~~) signed with a middle name, nickname, or initials (~~((or a common nickname))~~), the ballot may be counted as long as the (~~((surname))~~) last name and handwriting are clearly the same.

(5) If the name on the signature does not match the printed name, and the signature on the ballot declaration does not match the signature on the voter registration record, because the ballot was signed by another registered voter, the ballot may be counted for the registered voter who actually signed the ballot declaration if:

(a) The voter who signed the declaration can be identified;

(b) The signature on the declaration matches the signature on the voter registration record; and

(c) The voter who signed the declaration has not returned another ballot.

The county auditor may only count the races and measures for which the voter who signed the declaration is eligible to vote.

(6) If it is determined that the signature on a ballot declaration does not match the signature on the registration record and, prior to 8:00 p.m. on election day, the registered voter asserts that the signature on the ballot declaration is not his or her signature, the voter may be provided the opportunity to vote a replacement ballot.

(7) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(8) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter subsequently submitted a signature to cure the missing or mismatched signature. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

NEW SECTION

WAC 434-261-140 Precertification procedures. Prior to certifying the election, the county auditor shall exercise due diligence to confirm that all returned ballots have been received, processed, and reconciled, and that no ballots have been untabulated erroneously. Due diligence may include:

(1) Rechecking all ballot deposit sites; and

(2) Rechecking ballot storage containers in the ballot processing area, ballot tabulation area, canvassing board area, and vault.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-010 Definitions. As used in these regulations:

(1) "Canvassing" is that process of examining in detail a ballot, groups of ballots, election subtotals, or grand totals, in order to determine the final official returns of a primary, special, or general election, and to safeguard the integrity of the election process.

(2) "County canvassing board" is that body charged by law with the duty of canvassing ballots, ruling on the validity of questioned or challenged ballots, verifying all unofficial returns as listed in the auditor's abstract of votes, and producing the official county canvass report; it shall be composed of the county auditor, prosecuting attorney, and ~~((chairman))~~ chair of the board of the county legislative authority, or their designated representatives.

~~((3)) "Auditor's abstract of votes" is that report prepared by the county auditor which lists the number of registered voters, votes cast, all of the vote totals by precinct, or by combination of precincts if applicable, legislative and congressional district subtotals, if any, and county-wide totals. In a gubernatorial general election, the auditor's abstract of votes must also include the number of write-in votes cast for governor. The auditor's abstract of votes must also include the reconciliation report required by RCW 29A.60.235. Vote totals in the auditor's abstract of votes shall be unofficial until verified and certified by the county canvassing board.~~

~~(4) "County canvass report" is the auditor's abstract of votes after verification by the county canvassing board and shall contain a certificate which shall include the oath as specified in RCW 29A.60.200, the original signatures of each member of the county canvassing board, the county seal, and all other material pertinent to the election.~~

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-070 Official county canvass report. (1) Upon completion of the verification of the auditor's abstract of votes and the documentation of any corrective action taken, the county canvassing board shall sign a certification that:

(a) States that the abstract is a full, true, and correct representation of the votes cast for the issues and offices listed thereon ~~((The certification shall also state));~~

(b) Provides the total number of registered voters and votes cast in the county ~~((The certification shall));~~

(c) Contains the oath required by RCW 29A.60.200, signed by ~~((the county auditor and attested to by the chairman of the board of the county legislative authority, and))~~ all members of the board or their designees; and

(d) Shall have a space where the official seal of the county shall be attached.

~~((This))~~ (2) The official county canvass report shall include:

(a) The certification ~~((;));~~

(b) The auditor's abstract of votes ~~((, the written narrative of errors and discrepancies discovered and corrected, if applicable, and))~~ as described in WAC 434-262-030;

(c) The reconciliation report required by RCW 29A.60.235 ((shall constitute the official county canvass report)), which must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received, and any additional information necessary to explain variances; and

(d) If applicable, a written narrative of errors and discrepancies discovered and corrected.

(3) The official county canvass report is the cumulative report referenced in RCW 29A.60.230. This report may not be subsequently amended or altered, except in the event a recount conducted pursuant to chapter 29A.64 RCW, or upon order of the superior court ((, or by the county canvassing board reconvened specifically for that purpose)). The vote totals contained therein shall constitute the official returns of that election.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-030 County auditor's abstract of votes. ~~((No later than fourteen days following any primary or special election and twenty-one days following any general election))~~ The county canvassing board shall meet and canvass all ballots. Upon completion of this canvass fourteen days after a primary or special election and twenty-one days after a general election, ((the board shall direct)) the county auditor ~~((to prepare))~~ shall present the auditor's abstract of votes ~~((as defined by WAC 434-262-010. The reconciliation of ballots must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received. In addition, county auditors must provide any additional information necessary to explain variances between the number of ballots counted compared to the number of ballots received and credited. The certification report required by RCW 29A.60.235 must be included with the abstract of votes and must be submitted at the time of the county certification.)), which must include:~~

(1) The number of registered voters eligible to vote in the election;

(2) The number of ballots cast in the election, by precinct;

(3) The votes cast for each race or issue, including write-ins, undervotes, and overvotes;

(4) Legislative and congressional district subtotals, if any; and

(5) The vote totals by county.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

WAC 434-264-010 Recount. (1) A recount is the process for retabulating the votes, including write-ins, for a specific office or issue on all valid ballots ~~((, including write-ins;))~~ cast in a primary or election.

(2) All questions of voter registration, voter qualification, and voter intent previously considered during the original count shall not be reconsidered during a recount. If a ballot has been duplicated in accordance with WAC 434-261-005, the duplicate shall be counted.

(3) Prior to beginning the recount, the county auditor shall exercise due diligence to confirm that all returned ballots have been identified and reconciled, and that no ballots have been erroneously omitted from the original count.

(4) If any ballots or votes are discovered during the recount process that were erroneously not counted or canvassed during the original count or during a previous recount, the ballots shall be presented to the county canvassing board in accordance with RCW 29A.60.050, and the county canvassing board shall determine whether such ballots are to be included in the recount.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-264-030 Observers(~~(—Conduct)~~). (1) Observers must be permitted to witness activities associated with the recount.

(2) In addition to the admittance of two observers for each side of a recount as required by RCW 29A.64.041, a county canvassing board is encouraged to request additional observers from each of the two major political parties, as space allows. If provided, the additional party observers may be stationed to observe each counting board's process and must be considered official observers of the recount.

(3) Priority for viewing space shall be given in the following order:

(a) Candidates or their designated representative, or the designated representative for the proponents and opponents of a ballot measure;

(b) Counsel for a candidate or ballot measure campaign;

(c) Designated party observers;

(d) Media;

(e) General public.

(4) Any questions or objections by observers must be directed toward the county canvassing board, supervisory personnel or another designated staff person present at the recount. Under no circumstance may an observer interrupt the recount process in objection to the decision to count or not count a ballot.

The county auditor shall provide (~~(a copy of)~~) any additional guidelines that are established by the county canvassing board to each observer.

The county canvassing board or its designated representative may ask any observer who is causing a disruption to the recount process to leave the area.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-264-020 Recount—Restrictions.

WAC 434-264-040 Observers—Designated.

WAC 434-264-050 Observers—Priority.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

WAC 434-324-026 Voter registration form.

((STRICKEN GRAPHIC

instructions

You must be a United States citizen to register to vote.

how to register to vote or update a registration

Please print all information clearly using black or blue pen.

Mail or deliver this form to your County Elections Office. Addresses are on the next page.

for more information

online www.vote.wa.gov

call 1-800-448-4881

visit your County Elections Office

This registration will be in effect for the next election if postmarked or delivered no later than the Monday four weeks before Election Day.

If you miss this deadline, please contact your County Elections Office.

You will receive your ballot by mail. Contact your County Elections Office for in-person voting options.

If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to 5 years, a fine of up to \$10,000, or both.

Your name, address, gender and date of birth are public information.

*optional information

09/2009

Washington State Voter Registration Form

register online at www.vote.wa.gov

qualifications

if you mark no to either of these questions, do not complete this form

I am a citizen of the United States of America. I will be at least 18 years old by the next election.

personal information

last name first name middle date of birth (mm / dd / yyyy) phone number* male female

residential address (in Washington)

city zip

mailing address (if different than residential address)

city state / zip

email address*

I am in the Armed Forces (includes National Guard and Reserves) I am a U.S. citizen living outside the U.S.

Washington driver's license / state ID #

12 digit license/ID number boxes

if you do not have a Washington driver's license or state ID card, provide the last four digits of your Social Security number

social security number boxes

oath

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied the right to vote as a result of being convicted of a felony, I will have lived in Washington at this address for thirty days immediately before the next election at which I vote, and I will be at least 18 years old when I vote.

sign here date here

former registration

if you are already registered and are changing your name or address, fill out this section (this information will be used to update your registration)

former last name first name middle

former residential address city state / zip

STRICKEN GRAPHIC))

instructions

You must be a United States citizen to register to vote.

how to register to vote or update a registration

Please print all information clearly using black or blue pen.

Mail or deliver this form to your County Elections Office.

Addresses are on the reverse side.

for more information

online www.vote.wa.gov

call 1-800-448-4881

visit your County Elections Office

This registration will be in effect for the next election if postmarked or delivered no later than the Monday four weeks before Election Day.

If you miss this deadline, please contact your County Elections Office.

You will receive your ballot by mail. Contact your County Elections Office for in-person voting options.

If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to 5 years, a fine of up to \$10,000, or both.

Your name, address, gender and date of birth are public information.

12/2011

Washington State Voter Registration Form

register online at www.myvote.wa.gov

! qualifications

if you mark no to either of these questions, do not complete this form

yes no I am a citizen of the United States of America.

yes no I will be at least 18 years old by the next election.

personal information

last name _____ first _____ middle _____

date of birth (mm / dd / yyyy) _____ male female

residential address (in Washington) _____

city _____ ZIP _____

mailing address (if different than residential address) _____

city _____ state / ZIP _____

email address (optional) _____ phone number (optional) _____

I am in the Armed Forces (includes National Guard and Reserves).

I am a U.S. citizen living outside the U.S.

Washington driver license / state ID #

if you do not have a Washington driver license or state ID card, provide the last four digits of your Social Security number

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declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied the right to vote as a result of being convicted of a felony, I will have lived in Washington at this address for 30 days immediately before the next election at which I vote, and I will be at least 18 years old when I vote.

sign here [_____]

date here [_____]

former registration

if you are already registered and are changing your name or address, fill out this section (this information will be used to update your registration)

former last name _____ first _____ middle _____

former residential address _____ city _____ state / ZIP _____

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

WAC 434-324-108 Incapacitated persons lacking voting rights—Notice from court. Upon receipt of a court order declaring an incapacitated person does not retain voting rights as outlined in RCW 11.88.010, the auditor must search his or her county election management system to determine whether the person is a registered voter. If the auditor determines the incapacitated person's name and other identifying information match, he or she must cancel the incapacitated person's voter registration and send notification to the secretary through the county election management system. ~~((The auditor must also send a copy of the court order to the secretary.))~~ After canceling an incapacitated person's registration, the auditor must send a cancellation notice to the incapacitated person using the last known address.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

WAC 434-324-036 County-to-county transfers. ~~((Pursuant to RCW 29A.08.420,))~~ A registered voter may transfer his or her registration to another county by submitting a new voter registration application ~~((Prior to sending a verification notice, the county auditor shall use the voter registration data base to verify whether the registration is a transfer)), or returning a signed confirmation notice that provides the new address.~~ The minimum information necessary to complete the transfer to the new county is:

- (1) Name;
- (2) Residential address;
- (3) A signature on the oath in RCW 29A.08.230; and
- (4) Either date of birth, county voter ID number, or state voter ID number. The new county may request additional information to confirm that the registration application is a transfer.

NEW SECTION

WAC 434-324-087 Confirmation notice. (1) A confirmation notice sent to an inactive voter must be sent by first-class forwardable mail, and must include a response form that:

- (a) Is preaddressed and postage prepaid;
- (b) Includes either the voter's date of birth, county voter ID number, or state voter ID number;
- (c) Asks the voter to verify his or her current address; and
- (d) Asks the voter to sign the oath in RCW 29A.08.230. County auditors may use an existing stock of confirmation notices until December 31, 2012.

(2) If the response indicates that the voter has moved within the county, the auditor must transfer the voter's registration and send the voter an acknowledgment notice.

(3)(a) If the response indicates that the voter has moved to another county within Washington and the confirmation notice contains the minimum information required by WAC 434-324-036, the county auditor shall not cancel the voter but must immediately forward the confirmation notice to the county auditor in the voter's new county. The county auditor

in the voter's new county must register the voter using the information and signature on the confirmation notice. The new county must transfer the registration from the old county to the new county and send the voter an acknowledgment notice.

(b) If the response indicates that the voter has moved to another county within Washington but the confirmation notice does not contain the minimum information required by WAC 434-324-036, the county auditor shall not cancel the voter but must send the voter a registration application.

(4)(a) If the response indicates that the voter has moved out-of-state and the response is signed, the county auditor must cancel the voter.

(b) If the response indicates that the voter has moved out-of-state but is not signed, the county auditor shall not cancel the voter.

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

WAC 434-379-008 ((Signed)) Petition(s) requirements. ~~((To allow for sufficient personnel to accept and process signed petitions, the sponsor of an initiative or referendum must make an appointment with the elections division for submission of the signed petitions to the secretary. Petitions submitted prior to or at the appointment that clearly bear insufficient signatures must be rejected pursuant to RCW 29A.72.160. If the petitions are accepted and filed, additional petitions may be submitted until the applicable deadline established by RCW 29A.72.160. When submitting the petitions, the sponsor must also provide the text of the measure, exactly as it was printed on the circulated petitions, in an electronic Microsoft Word format.~~

~~(2) Signatures on initiative and referendum petitions submitted to the secretary may not be removed from the petition or eliminated from the signature count. Letters submitted to the secretary requesting the removal of one's own signature from a petition must be retained by the secretary as part of the public record for the petition.)~~ (1) Petitions must be at least eleven inches wide by fourteen inches long.

(2) Petitions must include:

(a) The initiative or referendum number;

(b) The ballot title, which must include:

(i) The subject, not more than ten words;

(ii) The concise description, not more than thirty words;

and

(iii) The question;

(c) The form and text required by:

(i) RCW 29A.72.110 for an initiative to the legislature;

(ii) RCW 29A.72.120 for an initiative to the people; or

(iii) RCW 29A.72.130 for a referendum measure;

(d) The warning in RCW 29A.72.140, printed on the front to cover at least four square inches;

(e) Numbered lines, not more than twenty, with space for each person to provide his or her:

(i) Signature;

(ii) Printed name; and

(iii) Address, city, and county where registered to vote;

(f) A one-inch margin on the bottom of the front side;

(g) The full text of the measure printed on the back; and

(h) The circulator's declaration printed on the back.

NEW SECTION

WAC 434-379-009 Processing filed petitions. (1) To allow for sufficient personnel to accept and process signed petitions, the sponsor of an initiative or referendum must make an appointment with the office of the secretary of state to file the signed petitions. Pursuant to RCW 29A.72.170, the secretary of state must reject petitions until a sufficient number that meet the minimum signature requirement are filed together. If the petitions are accepted and filed, additional petitions may be submitted until the applicable deadline established by RCW 29A.72.160. When submitting the petitions, the sponsor must also provide the text of the measure, exactly as it was printed on the circulated petitions, in electronic Microsoft Word format.

(2) Upon receipt of the petitions, the office of the secretary of state shall count the number of petitions received, and provide that total to the sponsor.

(3) A petition may not be rejected merely because it includes stray marks, scribbles, notes, or highlighting as long as the printed text on the petition is not illegible.

(4) A petition may not be rejected merely because the circulator's declaration on the back side of the petition is unsigned, or is signed with a stamp. AGO 2006 No. 13; *Washington Families Standing Together v. Secretary of State Sam Reed*, Thurston County Superior Court No. 09-2-02145-4, September 8, 2009.

(5) Once a petition is submitted to the office of the secretary of state, a person may not withdraw his or her signature from a petition. Letters submitted to the secretary of state requesting the removal of a signature from a petition must be retained by the secretary as part of the public record for the petition.

(6) Each petition must be reviewed for fraud, such as patterns of similar handwriting indicating forged signatures.

(7) Each signature line must be reviewed to invalidate:

- (a) Obscenities;
- (b) Lines with an out-of-state address;
- (c) Text that is not a name;
- (d) Duplicate names;
- (e) Lines that are crossed out and not readable;
- (f) Lines that include a name and address that both appear to be fictitious; or
- (g) Lines that are blank or unfilled.

(8) The following characteristics of a signature line do not, by themselves, invalidate the signature:

- (a) A name that is fictitious with an address that does not appear to be fictitious. Lines that include a name that appears to not be fictitious but an address that does appear to be fictitious, or vice versa;
- (b) Lines that are crossed out but still readable;
- (c) Lines that are missing a printed name;
- (d) Lines that are missing any portion of the address;
- (e) Multiple lines that have similar handwriting, as long as the signature handwriting is not similar;
- (f) Lines in which the signature, printed name, or address is written in the wrong field; or

(g) Signatures, printed names, or addresses written in the margin.

(9) After each signature line has been reviewed, the remaining signatures must be counted to obtain the total number of signatures submitted. That total must be provided to the sponsor.

(10) The secretary of state must verify either a random sample of the signatures submitted using the statistical formula authorized by RCW 29A.72.230 and established in WAC 434-379-010, or all of the signatures submitted. If the measure does not qualify for the ballot based on a random sample, the secretary of state must proceed to a full check of all signatures submitted. The secretary of state must follow WAC 434-379-020 to verify signatures.

NEW SECTION

WAC 434-379-012 Acceptance of signatures. (1) The secretary of state must determine if the person who signed a petition is registered to vote. The information may be researched in voter registration records using first name, last name, address, or any combination thereof. A signature may not be rejected merely because:

(a) The person signed with a middle name, nickname, or initials instead of the first name in the voter registration records, as long as the handwriting is clearly the same;

(b) The last name on the petition differs from the last name in the voter registration records, as long as the addresses and the handwriting on the first name are clearly the same;

(c) The last name on the petition or in the voter registration records is hyphenated while the last name in the other source is not;

(d) The first name and last name on the petition are reversed in the voter registration records;

(e) The address on the petition does not match the address in the voter registration records;

(f) The handwriting on the printed name or address does not match the handwriting on the signature; or

(g) The voter is on inactive status.

(2) If the secretary of state is unable to locate the person in the voter registration records, the signature shall be rejected as not registered to vote.

(3) If the person is registered to vote, the signature on the petition sheet must be matched to the signature in the person's voter registration record using the standards in WAC 434-379-020. If the signature on the petition:

(a) Matches the signature in the voter registration record, the signature must be accepted.

(b) Does not match the signature in the voter registration record, the signature must be rejected.

(c) Matches the signature in the voter registration record but another signature on the petition has already been accepted for that voter, the subsequent signature must be rejected as a duplicate.

WSR 12-14-110
PERMANENT RULES
TRANSPORTATION COMMISSION

[Filed July 3, 2012, 3:22 p.m., effective August 3, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The commission must consider toll rates that will help maintain travel time, speed, and reliability on the SR 520 corridor and must set and adjust toll rates to generate revenue sufficient and necessary to cover costs and obligations described in RCW 47.56.830 and 47.56.850.

Modifications made to chapter 468-270 WAC, adopted by the Washington state transportation commission on January 5, 2011, and filed under WSR 11-04-007, [on] January 20, 2011, stated "Starting July 1, 2012, the toll rates will increase two and one-half percent annually, subject to review and potential adjustment by the commission, in order to generate toll revenue sufficient to meet the costs and obligations listed in RCW 47.56.830 through 47.56.850."

This is a clarifying amendment that updates the toll rate tables to reflect the two and one-half percent increase adopted in 2011 and does not change the rules effect nor does it make any substantive changes to the rule.

Citation of Existing Rules Affected by this Order: Amending WAC 468-270-071.

Statutory Authority for Adoption: RCW 47.56.785, 47.56.795, 47.56.830, 47.56.850, and 47.56.870.

Adopted under notice filed as WSR 12-08-059 on April 3, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 3, 2012.

Reema Griffith
 Executive Director

AMENDATORY SECTION (Amending WSR 11-04-007, filed 1/20/11, effective 12/3/11)

WAC 468-270-071 What are the toll rates on the SR 520 Bridge? Tables 2 through 6 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

TABLE 2
 SR 520 BRIDGE
 TWO-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass	Pay By Mail	Pay By Plate¹	Customer-Initiated Payment²
Midnight to 5 a.m.	0.00	0.00	0.00	0.00
5 a.m. to 6 a.m.	\$(1.60) 1.64	\$(3.10) 3.18	\$(1.85) 1.89	\$(2.60) 2.68
6 a.m. to 7 a.m.	\$(2.80) 2.87	\$(4.30) 4.41	\$(3.05) 3.12	\$(3.80) 3.91
7 a.m. to 9 a.m.	\$(3.50) 3.59	\$(5.00) 5.13	\$(3.75) 3.84	\$(4.50) 4.63
9 a.m. to 10 a.m.	\$(2.80) 2.87	\$(4.30) 4.41	\$(3.05) 3.12	\$(3.80) 3.91
10 a.m. to 2 p.m.	\$(2.25) 2.31	\$(3.75) 3.84	\$(2.50) 2.56	\$(3.25) 3.34
2 p.m. to 3 p.m.	\$(2.80) 2.87	\$(4.30) 4.41	\$(3.05) 3.12	\$(3.80) 3.91
3 p.m. to 6 p.m.	\$(3.50) 3.59	\$(5.00) 5.13	\$(3.75) 3.84	\$(4.50) 4.63
6 p.m. to 7 p.m.	\$(2.80) 2.87	\$(4.30) 4.41	\$(3.05) 3.12	\$(3.80) 3.91
7 p.m. to 9 p.m.	\$(2.25) 2.31	\$(3.75) 3.84	\$(2.50) 2.56	\$(3.25) 3.34
9 p.m. to 11 p.m.	\$(1.60) 1.64	\$(3.10) 3.18	\$(1.85) 1.89	\$(2.60) 2.68
11 p.m. to 11:59 p.m.	0.00	0.00	0.00	0.00

Saturdays and Sundays ³	Good To Go! TM Pass	Pay By Mail	Pay By Plate ¹	Customer-Initiated Payment ²
Midnight to 5 a.m.	0.00	0.00	0.00	0.00
5 a.m. to 8 a.m.	\$(1.10) <u>1.13</u>	\$(2.60) <u>2.67</u>	\$(1.35) <u>1.38</u>	\$(2.10) <u>2.17</u>
8 a.m. to 11 a.m.	\$(1.65) <u>1.69</u>	\$(3.15) <u>3.23</u>	\$(1.90) <u>1.94</u>	\$(2.65) <u>2.73</u>
11 a.m. to 6 p.m.	\$(2.20) <u>2.26</u>	\$(3.70) <u>3.79</u>	\$(2.45) <u>2.51</u>	\$(3.20) <u>3.29</u>
6 p.m. to 9 p.m.	\$(1.65) <u>1.69</u>	\$(3.15) <u>3.23</u>	\$(1.90) <u>1.94</u>	\$(2.65) <u>2.73</u>
9 p.m. to 11 p.m.	\$(1.10) <u>1.13</u>	\$(2.60) <u>2.67</u>	\$(1.35) <u>1.38</u>	\$(2.10) <u>2.17</u>
11 p.m. to 11:59 p.m.	0.00	0.00	0.00	0.00

Notes: ¹For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

²For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

³The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 3
SR 520 BRIDGE
THREE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go! TM Pass	Pay By Mail	Pay By Plate ¹	Customer-Initiated Payment ²
Midnight to 5 a.m.	0.00	0.00	0.00	0.00
5 a.m. to 6 a.m.	\$(2.40) <u>2.46</u>	\$(4.65) <u>4.77</u>	\$(2.65) <u>2.71</u>	\$(4.15) <u>4.27</u>
6 a.m. to 7 a.m.	\$(4.20) <u>4.31</u>	\$(6.45) <u>6.61</u>	\$(4.45) <u>4.56</u>	\$(5.95) <u>6.11</u>
7 a.m. to 9 a.m.	\$(5.25) <u>5.38</u>	\$(7.50) <u>7.69</u>	\$(5.50) <u>5.63</u>	\$(7.00) <u>7.19</u>
9 a.m. to 10 a.m.	\$(4.20) <u>4.31</u>	\$(6.45) <u>6.61</u>	\$(4.45) <u>4.56</u>	\$(5.95) <u>6.11</u>
10 a.m. to 2 p.m.	\$(3.40) <u>3.49</u>	\$(5.65) <u>5.79</u>	\$(3.65) <u>3.74</u>	\$(5.15) <u>5.29</u>
2 p.m. to 3 p.m.	\$(4.20) <u>4.31</u>	\$(6.45) <u>6.61</u>	\$(4.45) <u>4.56</u>	\$(5.95) <u>6.11</u>
3 p.m. to 6 p.m.	\$(5.25) <u>5.38</u>	\$(7.50) <u>7.69</u>	\$(5.50) <u>5.63</u>	\$(7.00) <u>7.19</u>
6 p.m. to 7 p.m.	\$(4.20) <u>4.31</u>	\$(6.45) <u>6.61</u>	\$(4.45) <u>4.56</u>	\$(5.95) <u>6.11</u>
7 p.m. to 9 p.m.	\$(3.40) <u>3.49</u>	\$(5.65) <u>5.79</u>	\$(3.65) <u>3.74</u>	\$(5.15) <u>5.29</u>
9 p.m. to 11 p.m.	\$(2.40) <u>2.46</u>	\$(4.65) <u>4.77</u>	\$(2.65) <u>2.71</u>	\$(4.15) <u>4.27</u>
11 p.m. to 11:59 p.m.	0.00	0.00	0.00	0.00
Saturdays and Sundays ³	Good To Go! TM Pass	Pay By Mail	Pay By Plate ¹	Customer-Initiated Payment ²
Midnight to 5 a.m.	0.00	0.00	0.00	0.00
5 a.m. to 8 a.m.	\$(1.65) <u>1.69</u>	\$(3.90) <u>4.00</u>	\$(1.90) <u>1.94</u>	\$(3.40) <u>3.50</u>

8 a.m. to 11 a.m.	\$(2.50) 2.56	\$(4.75) 4.87	\$(2.75) 2.81	\$(4.25) 4.37
11 a.m. to 6 p.m.	\$(3.30) 3.38	\$(5.55) 5.69	\$(3.55) 3.63	\$(5.05) 5.19
6 p.m. to 9 p.m.	\$(2.50) 2.56	\$(4.75) 4.87	\$(2.75) 2.81	\$(4.25) 4.37
9 p.m. to 11 p.m.	\$(1.65) 1.69	\$(3.90) 4.00	\$(1.90) 1.94	\$(3.40) 3.50
11 p.m. to 11:59 p.m.	0.00	0.00	0.00	0.00

Notes: ¹For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

²For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

³The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 4
SR 520 BRIDGE
FOUR-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass	Pay By Mail	Pay By Plate¹	Customer-Initiated Payment²
Midnight to 5 a.m.	0.00	0.00	0.00	0.00
5 a.m. to 6 a.m.	\$(3.20) 3.28	\$(6.20) 6.36	\$(3.45) 3.53	\$(5.70) 5.86
6 a.m. to 7 a.m.	\$(5.60) 5.74	\$(8.60) 8.82	\$(5.85) 5.99	\$(8.10) 8.32
7 a.m. to 9 a.m.	\$(7.00) 7.18	\$(10.00) 10.25	\$(7.25) 7.43	\$(9.50) 9.75
9 a.m. to 10 a.m.	\$(5.60) 5.74	\$(8.60) 8.82	\$(5.85) 5.99	\$(8.10) 8.32
10 a.m. to 2 p.m.	\$(4.50) 4.61	\$(7.50) 7.69	\$(4.75) 4.86	\$(7.00) 7.19
2 p.m. to 3 p.m.	\$(5.60) 5.74	\$(8.60) 8.82	\$(5.85) 5.99	\$(8.10) 8.32
3 p.m. to 6 p.m.	\$(7.00) 7.18	\$(10.00) 10.25	\$(7.25) 7.43	\$(9.50) 9.75
6 p.m. to 7 p.m.	\$(5.60) 5.74	\$(8.60) 8.82	\$(5.85) 5.99	\$(8.10) 8.32
7 p.m. to 9 p.m.	\$(4.50) 4.61	\$(7.50) 7.69	\$(4.75) 4.86	\$(7.00) 7.19
9 p.m. to 11 p.m.	\$(3.20) 3.28	\$(6.20) 6.36	\$(3.45) 3.53	\$(5.70) 5.86
11 p.m. to 11:59 p.m.	0.00	0.00	0.00	0.00
Saturdays and Sundays³	Good To Go!™ Pass	Pay By Mail	Pay By Plate¹	Customer-Initiated Payment²
Midnight to 5 a.m.	0.00	0.00	0.00	0.00
5 a.m. to 8 a.m.	\$(2.20) 2.26	\$(5.20) 5.33	\$(2.45) 2.51	\$(4.70) 4.83
8 a.m. to 11 a.m.	\$(3.30) 3.38	\$(6.30) 6.46	\$(3.55) 3.63	\$(5.80) 5.96
11 a.m. to 6 p.m.	\$(4.40) 4.51	\$(7.40) 7.59	\$(4.65) 4.76	\$(6.90) 7.09
6 p.m. to 9 p.m.	\$(3.30) 3.38	\$(6.30) 6.46	\$(3.55) 3.63	\$(5.80) 5.96

9 p.m. to 11 p.m.	\$((2.20)) <u>2.26</u>	\$((5.20)) <u>5.33</u>	\$((2.45)) <u>2.51</u>	\$((4.70)) <u>4.83</u>
11 p.m. to 11:59 p.m.	0.00	0.00	0.00	0.00

Notes: ¹For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

²For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

³The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 5
SR 520 BRIDGE
FIVE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass	Pay By Mail	Pay By Plate¹	Customer-Initiated Payment²
Midnight to 5 a.m.	0.00	0.00	0.00	0.00
5 a.m. to 6 a.m.	\$((4.00)) <u>4.10</u>	\$((7.75)) <u>7.94</u>	\$((4.25)) <u>4.35</u>	\$((7.25)) <u>7.44</u>
6 a.m. to 7 a.m.	\$((7.00)) <u>7.18</u>	\$((10.75)) <u>11.02</u>	\$((7.25)) <u>7.43</u>	\$((10.25)) <u>10.52</u>
7 a.m. to 9 a.m.	\$((8.75)) <u>8.97</u>	\$((12.50)) <u>12.81</u>	\$((9.00)) <u>9.22</u>	\$((12.00)) <u>12.31</u>
9 a.m. to 10 a.m.	\$((7.00)) <u>7.18</u>	\$((10.75)) <u>11.02</u>	\$((7.25)) <u>7.43</u>	\$((10.25)) <u>10.52</u>
10 a.m. to 2 p.m.	\$((5.65)) <u>5.79</u>	\$((9.40)) <u>9.64</u>	\$((5.90)) <u>6.04</u>	\$((8.90)) <u>9.14</u>
2 p.m. to 3 p.m.	\$((7.00)) <u>7.18</u>	\$((10.75)) <u>11.02</u>	\$((7.25)) <u>7.43</u>	\$((10.25)) <u>10.52</u>
3 p.m. to 6 p.m.	\$((8.75)) <u>8.97</u>	\$((12.50)) <u>12.81</u>	\$((9.00)) <u>9.22</u>	\$((12.00)) <u>12.31</u>
6 p.m. to 7 p.m.	\$((7.00)) <u>7.18</u>	\$((10.75)) <u>11.02</u>	\$((7.25)) <u>7.43</u>	\$((10.25)) <u>10.52</u>
7 p.m. to 9 p.m.	\$((5.65)) <u>5.79</u>	\$((9.40)) <u>9.64</u>	\$((5.90)) <u>6.04</u>	\$((8.90)) <u>9.14</u>
9 p.m. to 11 p.m.	\$((4.00)) <u>4.10</u>	\$((7.75)) <u>7.94</u>	\$((4.25)) <u>4.35</u>	\$((7.25)) <u>7.44</u>
11 p.m. to 11:59 p.m.	0.00	0.00	0.00	0.00
Saturdays and Sundays³	Good To Go!™ Pass	Pay By Mail	Pay By Plate¹	Customer-Initiated Payment²
Midnight to 5 a.m.	0.00	0.00	0.00	0.00
5 a.m. to 8 a.m.	\$((2.75)) <u>2.82</u>	\$((6.50)) <u>6.66</u>	\$((3.00)) <u>3.07</u>	\$((6.00)) <u>6.16</u>
8 a.m. to 11 a.m.	\$((4.15)) <u>4.25</u>	\$((7.90)) <u>8.10</u>	\$((4.40)) <u>4.50</u>	\$((7.40)) <u>7.60</u>
11 a.m. to 6 p.m.	\$((5.50)) <u>5.64</u>	\$((9.25)) <u>9.48</u>	\$((5.75)) <u>5.89</u>	\$((8.75)) <u>8.98</u>
6 p.m. to 9 p.m.	\$((4.15)) <u>4.25</u>	\$((7.90)) <u>8.10</u>	\$((4.40)) <u>4.50</u>	\$((7.40)) <u>7.60</u>
9 p.m. to 11 p.m.	\$((2.75)) <u>2.82</u>	\$((6.50)) <u>6.66</u>	\$((3.00)) <u>3.07</u>	\$((6.00)) <u>6.16</u>
11 p.m. to 11:59 p.m.	0.00	0.00	0.00	0.00

Notes: ¹For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

²For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

³The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 6
SR 520 BRIDGE
SIX-AXLE OR MORE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass	Pay By Mail	Pay By Plate¹	Customer-Initiated Payment²
Midnight to 5 a.m.	0.00	0.00	0.00	0.00
5 a.m. to 6 a.m.	\$(4.80) 4.92	\$(9.30) 9.53	\$(5.05) 5.17	\$(8.80) 9.03
6 a.m. to 7 a.m.	\$(8.40) 8.61	\$(12.90) 13.22	\$(8.65) 8.86	\$(12.40) 12.72
7 a.m. to 9 a.m.	\$(10.50) 10.76	\$(15.00) 15.38	\$(10.75) 11.01	\$(14.50) 14.88
9 a.m. to 10 a.m.	\$(8.40) 8.61	\$(12.90) 13.22	\$(8.65) 8.86	\$(12.40) 12.72
10 a.m. to 2 p.m.	\$(6.75) 6.92	\$(11.25) 11.53	\$(7.00) 7.17	\$(10.75) 11.03
2 p.m. to 3 p.m.	\$(8.40) 8.61	\$(12.90) 13.22	\$(8.65) 8.86	\$(12.40) 12.72
3 p.m. to 6 p.m.	\$(10.50) 10.76	\$(15.00) 15.38	\$(10.75) 11.01	\$(14.50) 14.88
6 p.m. to 7 p.m.	\$(8.40) 8.61	\$(12.90) 13.22	\$(8.65) 8.86	\$(12.40) 12.72
7 p.m. to 9 p.m.	\$(6.75) 6.92	\$(11.25) 11.53	\$(7.00) 7.17	\$(10.75) 11.03
9 p.m. to 11 p.m.	\$(4.80) 4.92	\$(9.30) 9.53	\$(5.05) 5.17	\$(8.80) 9.03
11 p.m. to 11:59 p.m.	0.00	0.00	0.00	0.00
Saturdays and Sundays³	Good To Go!™ Pass	Pay By Mail	Pay By Plate¹	Customer-Initiated Payment²
Midnight to 5 a.m.	0.00	0.00	0.00	0.00
5 a.m. to 8 a.m.	\$(3.30) 3.38	\$(7.80) 8.00	\$(3.55) 3.63	\$(7.30) 7.50
8 a.m. to 11 a.m.	\$(4.95) 5.07	\$(9.45) 9.69	\$(5.20) 5.32	\$(8.95) 9.19
11 a.m. to 6 p.m.	\$(6.60) 6.77	\$(11.10) 11.38	\$(6.85) 7.02	\$(10.60) 10.88
6 p.m. to 9 p.m.	\$(4.95) 5.07	\$(9.45) 9.69	\$(5.20) 5.32	\$(8.95) 9.19
9 p.m. to 11 p.m.	\$(3.30) 3.38	\$(7.80) 8.00	\$(3.55) 3.63	\$(7.30) 7.50
11 p.m. to 11:59 p.m.	0.00	0.00	0.00	0.00

Notes: ¹For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

²For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

³The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

WSR 12-14-114
PERMANENT RULES
SECRETARY OF STATE

[Filed July 5, 2012, 11:04 a.m., effective August 5, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To streamline registration requirements, clarify language, and update requirement changes due to legislation in 2011.

Citation of Existing Rules Affected by this Order:
Repealing WAC 434-120-017, 434-120-030, 434-120-170,

434-120-180 and 434-120-220; and amending WAC 434-120-025, 434-120-040, 434-120-045, 434-120-046, 434-120-050, 434-120-100, 434-120-103, 434-120-105, 434-120-107, 434-120-110, 434-120-135, 434-120-140, 434-120-145, 434-120-160, 434-120-175, 434-120-185, 434-120-200, 434-120-210, 434-120-215, 434-120-225, 434-120-240, 434-120-250, 434-120-260, 434-120-307, 434-120-310, and 434-120-330.

Statutory Authority for Adoption: RCW 19.09.075, [19.09.]079, [19.09.]097, [19.09.]520.

Adopted under notice filed as WSR 12-11-081 on May 17, 2012.

Changes Other than Editing from Proposed to Adopted Version: Remove WAC 434-120-105 (2)(h)(vi) and renumber the following sections accordingly, because the amount of total expenditures used for administrative and fund-raising costs are not required to be reported in statute.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 26, Repealed 5.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 26, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 26, Repealed 5.

Number of Sections Adopted Using Negotiated Rule Making: New 2, Amended 26, Repealed 5; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 1, 2012.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

WAC 434-120-025 Definitions. (1) ~~((A "bona fide officer or employee" of a charitable organization is one:~~

~~(a) Whose conduct is subject to direct control by such organization;~~

~~(b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and~~

~~(c) Whose compensation is not computed on funds raised or to be raised.~~

~~(2) "Annual gross revenue" means, for any accounting period, the total gross amounts, including cash or noncash contributions received by or on behalf of a charitable organization from all sources, without subtracting any costs or expenses.~~

~~(3) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fundraiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries are not charitable~~

~~organizations, but are subject to RCW 19.09.100 (12), (15), and (18).~~

~~(4)) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including but not limited to recreational, environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.~~

~~((5)) (2) "Charitable trust" means any real or personal property right held by an entity or person that is intended to be used for a charitable purpose(s). The trust may be created by will, deed, articles of incorporation, or other governing instrument. It may be express or constructive.~~

~~((6) "Commercial coventurer" means a corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, individual, or other entity that:~~

~~(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public; and~~

~~(b) Is not otherwise regularly or primarily engaged in making charitable solicitations in this state or otherwise raising funds in this state for one or more charitable organizations; and~~

~~(c) Represents to prospective purchasers that if they purchase a good or service from the commercial coventurer, a specified portion of the sales price or a certain sum of money or some other specified thing of value will be donated to a named charitable organization; and~~

~~(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.~~

~~(7) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant, as defined by this section, is not a commercial fund-raiser or commercial fund-raising entity.~~

~~(8)) (3) "Compensation," means salaries, wages, fees, commissions, or any other remuneration or valuable consideration. Compensation shall not include reimbursement for expenses incurred and documented or noncash awards or~~

prizes, valued at one hundred dollars or less, given annually to each volunteer.

~~((9))~~ "Contribution" means the payment, donation, promise, or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

~~(10)~~ "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

~~((11))~~ (4) "Entity" means an organization, individual or institution with its own existence for legal and/or federal tax purposes. It has the capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and to be held responsible for its actions. Entity may include, but is not limited to, an individual, organization, corporation, association, limited liability company, trust, group, partnership, proprietorship, company, estate, agency or unit of state government, person as defined in RCW 1.16.080, or any combination thereof.

For purposes of complying with registration requirements under Washington's Charitable Solicitations Act, "entity" does not include a branch, chapter, unit, affiliate or similar subordinate of another entity if said subordinate:

- (a) Is under the direct supervision and control of the related entity;
- (b) Does not have its own separate existence from the related entity for legal and/or federal tax purposes; and
- (c) The related entity maintains registration under chapter 19.09 RCW.

Regardless of whether or not a subordinate is required to register under the act, it shall comply with the conditions set forth under RCW 19.09.100.

~~((Interpretive note: Notwithstanding other facts that may be indicative of a separate existence for legal and federal tax purposes, a branch, chapter, unit, affiliate or similar subordinate; (i) has its own existence for legal purposes if said subordinate has an organizational structure separate from a related entity; and (ii) has its own existence for federal tax purposes if it has been issued a federal employer identification number separate from a related entity, falls under a central organization's IRS group exemption, has obtained its own federal tax exempt status separate from a related entity, is required to file a separate federal informational return, or is included in a central organization's group return.~~

(12) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage in any compensated person to solicit contributions, and who does not at any time, have custody or control of contributions.

~~A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.~~

~~(13)~~ "General public" or "public" means any individual located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

~~((14))~~ (5) "Income-producing assets" means assets that are purchased with the prospect that the assets will generate income or appreciate in the future. In finance, an investment is a monetary asset purchased with the idea that the asset will provide income in the future or appreciate and be sold at a higher price; these investments would include, but are not limited to stocks, bonds or real property.

~~((15))~~ "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

~~(16)~~ "Other employee" of a charitable organization means any person:

- (a) Whose conduct is subject to direct control by such organization;
- (b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and
- (c) Who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

~~(17)~~ "Political organization" means those organizations whose activities are subject to chapter 42.17 RCW or the Federal Election Campaign Act of 1971, as amended.

~~(18)~~ "Religious organizations" means those entities that are not churches or integrated auxiliaries as defined and includes nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

~~((19))~~ (6) "Renewal date" means:

(a) For charitable organizations, the ~~((fifteenth))~~ last day of the ~~((fifth))~~ eleventh month after the close of the organization's ~~((fiscal or))~~ accounting year; and

(b) For commercial fund-raisers, the fifteenth day of the fifth month following the close of the organization's accounting year.

~~((20))~~ The "review" as used in WAC 434-120-107(2), means a review of a tax reporting form, including financial presentations included in the tax return, for state reporting purposes in accordance with chapter 19.09 RCW. "Review" does not mean a "review engagement" as defined by the American Institute of Certified Public Accountants (AICPA) Statements of Standards for Accounting and Review Services (SSARS).

~~(21))~~ (7) "Secretary" means the secretary of state or the secretary's designee, or authorized representative.

~~((22))~~ "Signed" means hand written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

~~(23)(a)~~ "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

- ~~(i)~~ Any appeal is made for any charitable purpose; or
- ~~(ii)~~ The name of any charitable organization is used as an inducement for consummating the sale; or
- ~~(iii)~~ Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

~~(b)~~ The solicitation shall be deemed complete when made, whether or not the person making it receives any contribution or makes any sale.

~~(e))~~ (8) "Solicitation" is defined in RCW 19.09.020(19) and includes:

~~(a)~~ A commercial fund-raiser (~~is considered to solicit~~) soliciting or (~~receive~~) receiving contributions from the public directly if contributions are solicited or received by the fund-raiser or by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members.

~~((d))~~ (b) Contributions are considered to be solicited or received indirectly if they are solicited or received by:

(i) Any organization owned or controlled by the commercial fund-raiser or owned or controlled by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members; or

(ii) Any person or organization, other than the charitable organization for which funds are solicited, with which the commercial fund-raiser as a contractual relationship governing the solicitation or receipt of contributions.

~~((e))~~ (c) "Solicitation" as defined in RCW 19.09.020 ~~((18))~~ (19), ~~((for the purposes of these regulations,))~~ does not include any of the following:

(i) An application or request for application for a grant, contract, or similar funding from any foundation, corporation, governmental agency or similar entity which has an established application and review procedure for reviewing such requests;

(ii) The attempt to sell a service or good which constitutes the basis of the charitable organization's activities under which the federal income tax exemption was granted, or is the primary purpose for the existence of the charitable organization. This includes, but is not limited to, admission to a theatrical or other performance presented by a charitable organization that is a drama, musical, dance, or similar group and fees for services such as a hospital provides or use of the charitable organization's facilities(~~;~~ or

~~(iii) Bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission).~~

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-040 Public information derived from registration. (1) Registration forms, and attachments, filed by charitable organizations and commercial fund-raisers pursuant to WAC 434-120-105 and 434-120-215, are available for public inspection or copying. However, Social Security numbers and financial account numbers are not public information. For purposes of public reports derived from that registration information, the secretary shall calculate, and make available to the public, the following information:

(2) For charitable organizations, the percentage of total expenditures in a reporting year allocated to charitable program services. This shall be calculated by dividing the amount reported as expended for charitable purposes by the amount reported as total expenses, and multiplying by 100.

(3) For commercial fund-raisers the percentage of the proceeds of charitable solicitations which are paid to or retained by charitable organizations. This shall be calculated by dividing the amount reported ~~((pursuant to WAC 434-120-215 (2)(1)(iii)(B))~~ by the amount reported pursuant to WAC 434-120-215 (2)(1)(iii)(A),) as received or retained by the charitable organization(s) after all fund-raising expenses have been deducted, by the amount reported as raised, regardless of who has possession of funds and multiplying by 100.

(4) Registrations of charitable trusts with several or mixed purposes shall not be made public under RCW 11.110.040 and 11.110.075.

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

WAC 434-120-045 Change in status, notification. An entity required to register under chapter 19.09 RCW shall notify the charities program in writing, within thirty days of any changes to its registration ~~((pursuant to WAC 434-120-105 and 434-120-215, or any other changes within thirty days after the change)).~~

The organization ~~((shall))~~ may submit the changes using the form that is available from the charities program and ((the appropriate fee per WAC 434-120-145)) request it by phone, e-mail, or access it on-line. There is no filing fee to submit changes of information.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-046 Record retention. (1) Charitable organizations and commercial fund-raisers shall keep, for a three-year period, the annual solicitation reports and the supporting documents including books, ledgers, prepared statements, compilations, reviews, or audit reports, or any other records on which they were based.

(2) Charitable trusts shall keep, for a three-year period, their annual financial information, and the supporting documents including books, ledgers, prepared statements, compilations, reviews, or audit reports, or any other records on which they were based.

(3) Solicitation reports, financial statements, and any other records, shall be available to the secretary of state, attorney general or county prosecutor on request.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-050 Signatures for on-line filings.

When submitting an on-line filing, the person completing the filing shall sign the application by ~~((: Typing their full name in the space provided on the web form; stating their capacity with the entity addressed in the filing; and))~~ following the directions for signing the web form.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-100 Who shall register—Exemptions.

(1) Any entity that ~~((will))~~ conducts ~~((a))~~ charitable solicitations or will solicit ~~((funds))~~ or collect contributions from the general public for charitable purposes shall register with the charities program under the Charitable Solicitations Act.

(2) Entities exempt from registration ~~((are))~~ include the following:

(a) ~~((Fund-raising counsel as defined in WAC 434-120-025(11);~~

~~((b))~~ Any political organization as defined in ~~((WAC 434-120-025(16))~~ RCW 19.09.020(15);

~~((c))~~ (b) Any entity which raises less than ~~((twenty-five))~~ fifty thousand dollars in revenue in any accounting year, if all ~~((of whose))~~ its activities including fund-raising, are conducted by volunteers, and ~~((whose))~~ no officers or members ~~((do not))~~ receive assets ~~((of))~~, or ~~((benefits))~~ compensation from the organization;

~~((d))~~ (c) A bona fide officer or other employee of the charitable organization for which the funds are solicited; and

~~((e))~~ (d) Any ~~((appeal for funds))~~ request for a contribution on behalf of a specific individual named in the solicitation, but only if all of the proceeds ~~((of the solicitation))~~ are given to or expended for the direct benefit of that individual. This does not include organizations that conduct solicitations for one or more individuals on a repeated or ongoing basis.

(3) Any entity that is exempt from registration by these regulations ~~((soliciting or conducting a solicitation))~~ shall comply with the conditions for solicitations as described in RCW 19.09.100.

(4) Interpretive note: The secretary of state does not interpret RCW 19.09.065 as requiring a registration by an employee of an educational institution who, as part of his or her employment with the institution, solicits contributions on behalf of a nonprofit charitable foundation affiliated with that institution, if the foundation is registered and the educational institution is either:

(a) A public school, college, or university operated by the state of Washington, one of its school districts, or a comparable public institution of another state or nation; or

(b) A private entity that is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-103 Required forms and filings. (1) A charitable organization complies with the ~~((filing and))~~ registration requirements of this chapter by filing ~~((the following documents))~~ with the secretary of state at the times, and in the manner, prescribed by these rules either the:

(a) State registration form described in ~~((WAC 434-120-105))~~ RCW 19.09.075(1). ~~((This))~~ The state registration form is available through the charities program; or

(b) Unified Registration Statement developed by the National Association of State Charity Officials (NASCO), if accompanied by the components identified for filing in Washington in the unified registration statement addendum. The unified registration statement and the addendum are available for download from the charities program web site.

(2) ~~((These))~~ The unified registration forms ~~((are))~~ may be used for an original registration ~~((form))~~, as well as ~~((for))~~ an annual renewal. The purpose of this ~~((report))~~ registration or renewal is to provide the public with basic information about the organization, as described in RCW 19.09.075 or WAC 434-120-105.

(3) ~~Whether~~ the state registration form or the unified registration statement ~~((must be))~~ and addendum are filed ~~((together))~~, each must be filed along with:

~~((a))~~ A solicitation report. ~~((This financial))~~ The solicitation report is filed by all charitable organizations, except those exempted by ~~((these rules))~~ law. The purpose of this report is to provide financial information ~~((regarding solicitations conducted during))~~ covering the reporting period. Solicitation reports are also filed as part of an annual renewal ~~((; and~~

~~((b))~~ All contracts between the commercial fund-raiser and all charitable organizations for which it solicits, as provided by WAC 434-120-240).

(4) ~~((The unified registration statement and the addendum are available for download at: http://www.multistatefiling.org.~~

~~((5))~~ The financial statement required by WAC 434-120-130 does not need to be filed with the office of the secretary of state. The purpose of this statement is to verify and support the information filed in the solicitation report. This statement must be available upon request as provided in this chapter.

~~((6))~~ A separate contract registration form accompanied by a copy of the contract between a commercial fund-raiser and any charitable organization must be filed with the secretary, before the commencement of any campaign as provided by RCW 19.09.097.

(5) This section is intended to be explanatory of other rules in this chapter, and not to modify or diminish the requirements of those rules.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-105 Charitable organization registration—Form and requirements. (1) Charitable organizations registering under this act shall submit the registration form described in WAC 434-120-103. The secretary's failure to affirmatively reject or return an incomplete registration or

other filing that does not fully comply with these rules or chapter 19.09 RCW shall not excuse the failure to comply.

(2) In addition to the requirements under RCW 19.09.075, a registration is not complete, and will not be accepted for filing, unless it includes:

(a) ~~((The name of the organization, and every address (including) Both ((physical) the mailing address and any ((mailing) physical address if different((, telephone number(s), fax number(s), and)), federal taxpayer identification number, ((including) and any electronic mail or internet addresses used by the organization. Private mail boxes must be identified through use of the designation "PMB" followed by the box number;~~

(b) All of the names under which the organization will solicit contributions, including, but not limited to, acronyms, abbreviations, DBAs and program names used in charitable solicitations reflected in the registration;

(c) ~~If the ((type of)) organization ((and taxpayer identification number)) is registered in Washington, the unified business identifier, and if the organization is ((registered in)) incorporated outside the state of Washington ((and date established, and if the organization is incorporated)), the state ((and date)) of incorporation;~~

(d) ~~The beginning and ending dates of its ((current fiscal or)) most recently completed accounting year;~~

(e) ~~((The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or record-keeping, whether such action has been instituted by a public agency or a private person or entity;~~

(f) ~~A list of all states where the organization is registered for charitable solicitations;~~

(g) ~~The name, address, and telephone number of the officers or of persons accepting responsibility for the organization, including the:~~

(i) ~~Members of the board of directors or any committee or group serving the function of a board of directors, regardless of the name of the committee or group; and~~

(ii) ~~Officers of the charitable organization, or the persons serving the function of officers, regardless of the title of the position;~~

(h) ~~The names of the three officers or employees receiving the greatest amount of compensation from the organization;~~

(i) ~~The purpose of the charitable organization, including, if applicable, the names and addresses of any specific beneficiaries which the charitable organization supports and to whom assets would be distributed to in the event of dissolution. When filing a renewal or an updated registration, the organization is not required to submit a list of beneficiaries if there have been no changes to that list;~~

(j) ~~A statement indicating whether the organization is exempt from federal income tax, and copy of the letter by which the Internal Revenue Service granted the organization tax exempt status if the Internal Revenue Service has granted~~

~~the organization such status. The organization shall indicate the section of the Internal Revenue Code under which they are exempt from the federal income tax;~~

(k) ~~The name and address of the person or entity with authority for the preparation of financial statements or the maintenance of financial information on behalf of the organization;~~

(l) ~~The name, address, and telephone number of an individual with expenditure authority who can respond to questions regarding expenditures of funds, and the names and addresses of any commercial fund-raiser who has the authority to expend funds or incur obligations on behalf of the organization;~~

(m) ~~An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305;~~

((n)) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or for action currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or record-keeping, whether such action has been instituted by a public agency or a private person or entity;

(f) A list of all states where the organization is registered for charitable solicitations;

(g) The officers or persons required under RCW 19.09.075 (1)(c) may include:

(i) Members of the board of directors or any committee or group serving the function of a board of directors, regardless of the name of the committee or group; and

(ii) Officers of the charitable organization, or the persons serving the function of officers, regardless of the title of the position.

(h) In addition to the financial information in RCW 19.09.075 (1)(h), a solicitation report of the charitable organization for the preceding ((fiscal or)) accounting year ((including) includes, but is not limited to:

(i) ((The types of solicitations conducted;

(ii) The name, physical address, and telephone number of any commercial fund-raiser conducting solicitations on behalf of the organization in Washington during the period covered by this report; and

(iii)) All addresses, physical or mailing, used to solicit or collect contributions;

(ii) The total dollar value of contributions received from solicitations, ((which includes but is not limited to,)) special events, sale of inventory, and amounts collected on behalf of the charitable organization by a commercial fund-raiser;

((iv)) (iii) The total dollar value of revenue from all other sources;

((v)) (iv) Gross receipts, including amounts collected on behalf of the charitable organization by a commercial fund-raiser or commercial coventurer regardless of custody of funds. "Gross receipts" include, but are not limited to, contributions, gross revenue from special events, sales of inventory, goods or services (including tickets to events), and all other revenue from solicitations;

~~((vi))~~ (v) The amount of total expenditures used directly for charitable program services, including payments to affiliates if costs involved are not connected with the administrative or fund-raising functions of the reporting organization;

~~((vii))~~ (vi) The amount of total expenditures used for administrative and fund-raising costs, including amounts paid to or retained by a commercial fund-raiser or fund-raising counsel. "Administrative and fund-raising costs" include, but are not limited to, the following expenses if not directly related to program services: salaries, wages, compensation, legal, accounting, occupancy, equipment costs, printing and publications, telephone, postage, supplies, travel, meetings, fees for services (including fund-raising consultation), and cost of goods or inventory sold that are not directly related to program services.

~~((viii))~~ (vi) Total expenditures, including, but not limited to, amounts paid to or retained by a commercial fund-raiser, or fund-raising counsel, amounts expended for charitable program services, administrative expenses, fees for services, and fund-raising costs incurred by the charitable organization.

~~((ix))~~ (vii) Beginning assets; and

~~((x))~~ (viii) Ending assets.

~~((e))~~ A copy of the charitable organization's federal informational return (Form 990, 990PF, 990EZ, or 990T) reflecting the fiscal or accounting year covered by this report; if the federal informational return does not contain the total amount of money applied to charitable purposes, fund-raising costs and other expenses as required pursuant to RCW 19.09.075 (7)(e), a supplemental report may be required by the secretary. The supplemental report shall be in the form prescribed by the secretary.

~~((p))~~ (ix) The charitable organization may provide additional information which the organization believes would be of assistance in understanding other reported information, or to provide context for reported information.

(3) The organization shall report actual figures, and shall not use estimates, when completing a solicitation report (~~or a supplemental solicitation report~~).

(4) All charitable organization registrations shall be signed and dated by the president, treasurer, or comparable officer of the organization or, in the absence of officers, person responsible for the organization.

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-107 Audited financial report—Tiered reporting requirements ~~((effective January 1, 2010))~~. (1) ~~((Tier one: Charitable organizations with one million dollars or less in annual gross revenue averaged over the last three accounting years must meet the financial reporting requirements specified in RCW 19.09.075 and WAC 434-120-105.~~

~~(2) Tier two: Charitable organizations with more than one million dollars and up to three million dollars in annual gross revenue averaged over the last three accounting years, must provide one of the following:~~

~~(a) A photocopy of the federal tax reporting form (990, 990EZ, 990 PF) that has been prepared by a certified public~~

~~accountant or other professional, who normally prepares or reviews federal returns in the ordinary course of their business; or~~

~~(b) A photocopy of an audited financial statement prepared by an independent certified public accountant for the preceding accounting year; or~~

~~(c) For governmental entities, a photocopy of the most recent audited financial statement prepared by the applicable government auditing agency or other independent certified public accountant.~~

~~(3) Tier three: Charitable organizations with more than three million dollars in annual gross revenue averaged over the last three accounting years, must submit one of the following:~~

~~(a) A photocopy of an audited financial statement prepared by an independent certified public accountant for the preceding accounting year; or~~

~~(b) For governmental entities, a photocopy of the most recent audited financial statement prepared by the applicable government auditing agency or other independent certified public accountant.~~

~~(4))~~ If an organization has been in existence for less than three years, the organization must calculate its average gross revenue based on the number of years the organization has been in existence to determine which tier, per RCW 19.09.541, is applicable.

~~((5) Waiver of audit requirement:))~~ (2) For purposes of these regulations, the secretary may waive the requirement to ~~((file))~~ obtain an audited financial statement~~((s))~~ prepared by an independent certified public accountant for organizations with more than three million dollars in gross revenue averaged over the last three accounting years ~~((and))~~ that meet one of the following:

(a) Directly or indirectly receives five hundred thousand dollars or less in cash averaged over the last three accounting years. Organizations with five hundred thousand dollars or less in cash averaged over the last three accounting years must meet tier two reporting requirements in RCW 19.09.541 (2). For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers received from all sources including, but not limited to, solicitations, investment income and tuition. "Cash" does not include gifts of tangible, real, or personal property or in-kind services; or

(b) Organizations who can demonstrate that they have reached a three-year average of more than three million dollars in gross revenue through unusual or nonrecurring revenue received in a single year without which they would not have met the three-year annual gross average threshold.

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-110 Organizations exempt from filing requirements—Optional ~~((filing))~~ registration. (1) Charitable organizations exempt from the filing requirements of this chapter under RCW ~~((19.09.076(1)))~~ 19.09.081 and WAC 434-120-100(2)~~((b), (c), or (e))~~ may ~~((register))~~ file an optional registration with the charities program.

(2) Charitable organizations choosing to ~~((register))~~ file an optional registration under this section may register by completing the registration form specified by the secretary.

(3) Charitable organizations registered under this section may change or update their registration by filing the updated information with the charities program.

(4) Expedited processing under WAC 434-112-080 is available for registrations and updates under this section.

~~((5) The secretary offers this optional registration because some grant making entities and programs require registration with the charities program.))~~

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-135 Contributor lists. All charitable organizations registered under this act must keep records of all contributors to the organization for three years. If a commercial fund raiser manages a campaign for a charitable organization, either the commercial fund raiser or the charitable organization must be the entity responsible for maintaining the contributor records for that campaign. These records must include the names of the following contributors:

(1) Each contributing entity that collects individual donations from an employee or member group or a business, turning them over to the charitable organization as a single sum, such as the United Way;

(2) Each corporation that contributed; and

(3) Each individual who contributed more than twenty-five dollars.

The records must be compiled and retrievable ~~((and compilable))~~ for a period of three years and must be turned over within ten working days upon written request of the attorney general or the county prosecutor, although the organization is not required to keep the names in a standard list format at all times.

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-140 How and when to register. (1) Initial registration: An entity required to register as a charitable organization must complete the form described in RCW 19.09.075 and WAC ((434-120-105)) 434-120-103 and submit it with the fee in ~~((WAC 434-120-145))~~ RCW 19.09.162 (1) prior to conducting any solicitation.

(2) Annual renewal:

(a) An entity must renew its charitable registration by ~~((no later than))~~ submitting a renewal form and the fee in RCW 19.09.062(2) so they are received by the ((fifteenth)) last day of the ((fifth)) eleventh month after the end of its accounting year.

(b) The renewal must include the same information required for registration as described in RCW 19.09.075 and WAC 434-120-105 ((and RCW 19.09.075)) except that a determination letter from the Internal Revenue Service need not be attached if it was previously filed. The solicitation report will be based on the most recent filing with the Internal Revenue Service or if the organization does not file with the Internal Revenue Service, the solicitation report will be based on the most recently completed accounting year. No organi-

zation may submit the same financial information for two consecutive years.

(c) ~~((No))~~ A change in an entity's accounting year ((may)) will not cause the due date of a renewal to be more than one year after the previous registration or renewal. ~~((For purposes of renewals that include financial information for a partial year, due to a change of accounting year, threshold levels for registration and financial statement requirements must be determined on a prorated basis.))~~

~~((3) An organization must notify the charities program of a change in organization name, mailing address, organization structure, principal officer, Washington representative, tax status, accounting year, or any other information filed under RCW 19.09.075 or WAC 434-120-105.))~~

~~((4) The organization must submit changes using the form available from the charities program within thirty days after the change.))~~

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-145 Fees. (1) ~~((Original))~~ Initial registration: Entities registering as charitable organizations must pay a fee of sixty dollars for the first year of registration; charitable organizations registering ~~((as exempt))~~ an optional registration per RCW ((19.09.076(1))) 19.09.081, may do so at no ~~((fee))~~ charge.

(2) Annual renewal: Charitable organizations must pay ((a)) an annual renewal fee of forty dollars; organizations choosing to register ((as exempt)) an optional registration per ((WAC 434-120-110)) RCW 19.09.081 are not required to ((renew)) file annual renewals.

(3) Information changes: Organizations filing changes of information described in ~~((WAC 434-120-105 will file))~~ RCW 19.09.085(3) may do so at no charge.

(4) Photocopy fees: For copy of a charitable organization registration form or letter, including the ~~((finance and))~~ solicitation report(s), the fee is five dollars per entity.

(5) The fee for expedited service is twenty dollars for single on-line transactions within each new or existing charity's program file. The fee for expedited service of paper documents (in-person~~((s))~~ or mail ~~((or fax))~~) is fifty dollars for single or multiple transactions within each new or existing charity's program file. In addition, the filing fee for each transaction will apply.

(6) For service of process on a registered charity, commercial fund-raiser, or charitable trust, the fee is fifty dollars per address.

(7) Charitable organizations must pay a sixty dollar filing fee to reactivate their registration following closure per RCW 19.09.062 and pay applicable late fee per RCW 19.09.271.

(8) Charitable organizations must pay the twenty dollar filing fee to register a contract with a commercial fund-raiser as required in RCW 19.09.097 and WAC 434-120-240.

AMENDATORY SECTION (Amending WSR 10-15-036, filed 7/13/10, effective 8/13/10)

WAC 434-120-160 Fees for late registration. (1) A charitable organization that fails to renew its registration by

its renewal date must pay a late fee of fifty dollars. ~~((The charitable organization must pay an additional fifty dollar late fee for each year, including the current year, that it was not registered under this act, but was required to do so. If the registration has lapsed for a period of more than two years, the entity must provide solicitation information for the previous two years, and must reregister as a new charitable organization.))~~

(2) The fees for late registration are in addition to the filing fees under WAC 434-120-145, and any other remedies that may be imposed by law, including penalties for soliciting without being registered.

(3) The charitable organization may ask the secretary to waive fees for late registration. The request must include a description of the circumstances that justify a waiver of the late fees. Under special circumstances the secretary may waive fees for late registration that are imposed by these regulations.

NEW SECTION

WAC 434-120-165 Failure to renew, registration closure and reactivating registration—Charitable organizations. (1) A charitable organization who fails to renew its registration by the renewal date is considered to have a delinquent registration status and is subject to a late fee per WAC 434-120-160.

(a) The secretary will send by regular or electronic mail a delinquency notice within sixty days of the organization's delinquent status. The notice will include a request that the organization provide the items within thirty days to renew its registration. The organization's failure to receive the notice will not alter its delinquent status or relieve it of the requirement to renew.

(b) A charitable organization who fails to submit the required items within thirty days of notice will be deemed unregistered and its registration will be closed. Registration closure may also occur if the secretary's notice is not deliverable at the organization's mailing address of record.

(2) If a registration or renewal is incomplete, the secretary will contact the charitable organization by regular or electronic mail and request the missing items within thirty days. If the requested items are not received within thirty days, the registration or renewal will not be filed and the organization must resubmit the required form, filing fee and applicable late fee to register or renew. The organization may retain the original registration number assigned by the secretary. If the organization's renewal date has passed, its registration will be closed. Registration closure will also occur if the secretary's notice is not deliverable at the organization's mailing address of record. Filing fees are nonrefundable.

(3) A charitable organization whose registration has been closed must reactivate its registration by submitting an initial registration form including a solicitation report for the preceding completed accounting year and an initial sixty dollar filing fee. Late fees apply per WAC 434-120-160. The organization may retain the original registration number assigned by the secretary.

(4) A charitable organization that closes its registration voluntarily because it is no longer required to register may reactivate its registration by submitting an initial registration form including a solicitation report for the preceding completed accounting year and an initial sixty dollar filing fee. The organization may retain the original registration number assigned by the secretary.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-175 Voluntary verification information. Each organization registering ~~((under the act))~~ with the secretary may submit additional information, not required by law, ~~((for its file))~~ if the information is intended to inform the public about its programs and activities and to verify its existence. ~~((The charities program may place such information in the organization's file for a specified period of time. Persons coming into the office may read such information; however, no voluntary verification information shall be mailed out.))~~

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-185 Charitable advisory council. The purpose of the charitable advisory council is to advise the secretary in the following areas:

- (1) Training and education needs of charitable organizations within the state;
- (2) Model policies related to governance and administration of charitable organizations in accordance with fiduciary principles;
- (3) Emerging issues and trends affecting charitable organizations; and
- (4) Other related issues at the request of the secretary.

The council will consist of thirteen members chosen by the secretary to represent a broad range of charities by size, purpose, geographic regions of the state, and general expertise in management and leadership of charitable organizations. An ex officio member will be appointed by the attorney general ~~((per RCW 19.09.510))~~.

Members serve at the pleasure of the secretary. Terms are staggered, with the original board drawing lots for two- and three-year terms. All following terms are three years but all terms expire no later than when the appointing secretary leaves office. Vacancies may be filled by the secretary upon notice of a vacancy from the member.

The council will elect a chairperson from its members annually. The frequency of meetings will be at least twice a year, but additional meetings may be called by the secretary or the council. Council members are not compensated for their service, but may be reimbursed for expenses incurred in the conduct of their official duties. Reimbursement is at current state rates for travel and all reimbursement requests must be received within thirty days of incurring the expense.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-200 Required filings. (1) A commercial fund-raiser complies with the ~~((filing and))~~ registration

requirements of this chapter by filing the following documents with the secretary of state at the times, and in the manner, prescribed by these rules:

(a) Commercial fund-raiser registration form. This form is used as an ~~((original))~~ initial registration form, as well as an annual renewal form. The purpose of this report is to provide basic information about the organization, as described in RCW 19.09.079;

(b) Solicitation report. These reports are filed annually by all commercial fund-raisers, except those exempted by these rules. The purpose of ~~((these))~~ this report~~((s))~~ is to provide financial information ~~((regarding solicitations conducted))~~ during the reporting period, of an informational nature to the public~~((These reports must be filed in the time and manner specified in WAC 434-120-215)); and~~

(c) All surety bonds required by WAC 434-120-260~~((; and~~

~~((d) All contracts between the commercial fund-raiser and all charitable organizations for which it solicits, as provided by WAC 434-120-240)).~~

(2) The financial statement required by WAC 434-120-255 does not need to be filed with the office of the secretary of state. The purpose of this statement is to verify and support the information filed in the solicitation report. This statement must be available upon request as provided in this chapter.

(3) This section is intended to be explanatory of other rules in this chapter, and not to modify or diminish the requirements of those rules.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-210 Who shall register. (1) Every commercial fund-raiser, as described in RCW 19.09.020(5), shall register each year, pursuant to WAC ~~((434-120-215))~~ 434-120-200 by completing the form described in RCW 19.09.079 and WAC 434-120-215 and submitting it with the fee in RCW 19.09.062(3) prior to conducting any solicitation.

(2) Entities exempt from registration include the following:

(a) Fund-raising counsel as defined in RCW 19.09.020 (10);

(b) Commercial coventurers as defined in 19.09.020(4); and

(c) Suppliers of goods and services to charitable organizations for fund-raising purposes are exempt from registration, if they are not otherwise engaged in the business of charitable fund-raising.

(3) If a commercial fund-raiser does business under more than one name, each name used by that entity must be registered and bonded separately.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-215 Commercial fund-raiser registration—Form and requirements. (1) Commercial fund-raisers registering under this act shall use the commercial fund-raiser registration form ~~((available in the office of the charities program))~~ described in WAC 434-120-200. The secretary's failure to affirmatively reject or return an incomplete

registration or other filing that does not fully comply with these rules or chapter 19.09 RCW, shall not excuse the failure to comply. The secretary's acceptance of a registration or other filing which violates these rules or chapter 19.09 RCW shall not excuse the violation.

(2) In addition to the requirements under RCW 19.09.079, a registration is not complete, and will not be accepted for filing, unless it includes:

~~((a) Both the ((name of the organization, and every address (including both physical)) mailing address and ((any mailing)) physical address (if different), ((telephone number(s), fax number(s), of the commercial fund-raising entity under which contributions are being solicited or received, including)) and any electronic mail or internet addresses, as well as any physical or mailing addresses, used by the ((organization)) commercial fund-raiser to solicit or receive contributions.~~ Private mail boxes must be identified through use of the designation "PMB" followed by the box number;

~~((b) ((The name(s); address(es); and telephone number(s) of the individual(s) responsible for fund-raising activities of the entity in Washington state;~~

~~((c)) The type of organization, federal taxpayer identification number, the unified business identifier if the organization is registered in Washington ~~((and date established;))~~ and if the organization is incorporated, the state ~~((and date))~~ of incorporation;~~

~~((d))~~ (c) The ((end date)) beginning and ending dates of its ((current fiscal or)) preceding completed accounting year;

~~((e) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or record-keeping, whether such action has been instituted by a public agency or a private person or entity;~~

~~((f) A list of all states where the organization is registered for fund-raising, including any other names under which the organization is currently registered or has been registered in the past three years;~~

~~((g) The name, address, and telephone number of the officers or of persons accepting responsibility for the organization;~~

~~((h) The names of the three officers or employees receiving the greatest amount of compensation from the organization;~~

~~((i) The name and address of the person or entity with authority for the preparation of financial statements or the maintenance of financial information on behalf of the organization;~~

~~((j) The name, address, and telephone number of an individual with expenditure authority who can respond to questions regarding expenditures of funds, and the names and addresses of any charitable organizations who have given the commercial fund-raiser authority to expend funds or incur obligations on behalf of the organization;~~

~~(k) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305;~~

~~(H)) (d) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or for action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or record-keeping, whether such action has been instituted by a public agency or a private person or entity;~~

~~(e) A list of all states where the organization is registered for charitable solicitations;~~

~~(f) In addition to the financial information in RCW 19.09.079(6), a solicitation report is required of the fund-raising activities of the entity for the preceding ((fiscal or)) accounting year ((including)) and includes, but is not limited to:~~

~~(i) ((The types of fund-raising services conducted;~~
~~(ii) The name of each charitable organization to whom this entity has provided fund-raising services;~~
~~(iii) The total dollar value of the following:~~

~~(A)) Contributions received, either by the commercial fund-raiser or the charities with which the commercial fund-raiser contracts, as a result of services provided by the commercial fund-raiser during the year shown above. (This is the total amount of money raised, regardless of who has possession of funds.)~~

~~((B)) (ii) Funds either retained by, or paid to, the charities with whom the commercial fund-raiser contracts, after fees and any expenses have been subtracted. (This is the portion of money raised that the charities receive or keep after all fund-raising expenses have been deducted.)~~

~~((iv) The name, address, and telephone number of any other commercial fund-raiser retained in the conduct of providing fund-raising services;))~~

(3) The commercial fund-raiser may provide additional information which the commercial fund-raiser believes would be of assistance in understanding other reported information, or to provide context for reported information.

(4) The commercial fund-raiser ~~((shall))~~ must report actual figures and shall not use estimates when completing a solicitation report ~~((or a supplemental solicitation report)).~~

(5) All commercial fund-raiser registrations shall be signed by an officer or owner of the commercial fund-raiser.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-225 Annual renewal. (1) Each commercial fund-raiser shall renew annually by submitting a renewal form and the filing fee in RCW 19.09.062 so they are received by no later than the fifteenth day of the fifth month after the end of its ~~((fiscal))~~ accounting year.

The renewal must include the same information required for registration as described in RCW 19.09.079 and WAC 434-120-215. The solicitation report will be based on the most recently completed accounting year. No organization

may submit the same financial information for two consecutive years.

(2) No change in a fund-raiser's ~~((fiscal))~~ accounting year ((shall)) will cause the due date of a renewal to be more than one year after the previous registration or renewal. ~~((For purposes of renewals that include financial information for a partial year, due to a change of fiscal year, threshold levels for financial statement requirements shall be determined on a prorated basis.))~~

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

WAC 434-120-240 Contract between a commercial fund-raiser and a charitable organization. (1) A commercial fund-raiser and charitable organization entering into a contract shall register the contract by completing the contract registration form, attaching a signed copy of the written contract, and filing the form and contract with the secretary. The contract shall be registered before the commencement of the campaign.

(2) The charitable organization is responsible for registering the contract, contract registration form and paying the appropriate fee per ~~((WAC 434-120-250))~~ RCW 19.09.062 (5).

~~(3) ((Both the contract and registration form shall be signed by the commercial fund-raiser owner or principal and the charitable organization president, treasurer, or comparable officer.~~

~~(4))~~ In addition to the statutory requirements of RCW 19.09.097, the terms of the contract shall specify who will maintain the donor list.

NEW SECTION

WAC 434-120-245 Failure to renew, registration closure and reactivating registration—Commercial fund-raisers. (1) A commercial fund-raiser who fails to renew its registration by the renewal date is considered to have a delinquent registration status and is subject to a late fee per WAC 434-120-250.

(a) The secretary will send by regular or electronic mail a delinquency notice within sixty days of the organization's delinquent status. The notice will include a request that the organization provide the items within thirty days to renew its registration. The organization's failure to receive the notice will not alter its delinquent status or relieve it of the requirement to renew.

(b) A commercial fund-raiser who fails to submit the required items within thirty days of notice will be deemed unregistered and its registration will be closed. Registration closure may also occur if the secretary's notice is not deliverable at the organization's mailing address of record.

(2) If a registration or renewal is incomplete, the secretary will contact the commercial fund-raiser by regular or electronic mail and request the missing items within thirty days. If the requested items are not received within thirty days, the registration or renewal will not be filed and the organization must resubmit the required form, filing fee and applicable late fee to register or renew and it may retain the original registration number assigned by the secretary. If the

organization's renewal date has passed, its registration will be closed. Registration closure will also occur if the secretary's notice is not deliverable at the organization's mailing address of record. Filing fees are nonrefundable.

(3) A commercial fund-raiser whose registration has been closed for failure to register or renew must reactivate its registration by submitting an initial registration form including a solicitation report for the preceding completed accounting year and an initial three hundred dollar filing fee. Late fees apply per WAC 434-120-250. The organization may retain the original registration number assigned by the secretary.

(4) A commercial fund-raiser that closes its registration voluntarily because it is no longer required to register may reactivate its registration by submitting an initial registration form including a solicitation report for the preceding completed accounting year and an initial three hundred dollar filing fee. The organization may retain the original registration number assigned by the secretary.

AMENDATORY SECTION (Amending WSR 10-15-036, filed 7/13/10, effective 8/13/10)

WAC 434-120-250 Fees. All commercial fund-raisers must pay an ~~((original))~~ initial registration fee at the time of filing and an annual renewal fee.

(1) The fee for ~~((original))~~ initial registration in this state is three hundred dollars.

(2) The annual renewal fee is two hundred twenty-five dollars.

(3) There is no fee for filing changes in any information previously filed under RCW 19.09.079, and WAC 434-120-215.

(4) The fee for filing a contract with a charitable organization under RCW 19.09.097 and WAC 434-120-240 is twenty dollars.

(5) The late fee is fifty dollars for failing to renew registration as a commercial fund-raiser by the due date.

~~((The commercial fund-raiser must pay an additional late fee of one hundred dollars for each year that it was required to register under this act and failed to do so, including the current year.~~

~~H)) (a) The fees for late registration ((has lapsed for more than two years, the entity must provide solicitation information for the previous two years and must register as a new commercial fund-raiser under RCW 19.09.079,)) are in addition to ~~((paying any late fees due under this section.~~~~

~~Any commercial fund-raiser failing to renew registration and conducting business may be subject to other penalties and remedies that may be imposed by law, including penalties for soliciting without being registered. These penalties are cumulative)) the filing fees and any other remedies that may be imposed by law, including penalties for soliciting without being registered. These penalties are cumulative.~~

(b) The commercial fund-raiser may ask the secretary to waive fees for late registration. The request must include a description of the circumstances that justify a waiver of the late fees. Under special circumstances the secretary may waive fees for late registration that are imposed by these regulations.

(6) The fee for expedited service is twenty dollars for a single on-line transaction within one commercial fund-raiser ~~((file))~~ registration. The fee for expedited service of paper documents (in-person~~((;))~~ or mail~~((; or fax))~~) is fifty dollars for single or multiple transactions within one commercial fund-raiser ~~((file))~~ registration. In addition, the filing fee for each transaction will apply.

(7) The photocopy fee is ten dollars for copies of the annual registration form or letter.

(8) Commercial fund-raisers must pay a three hundred dollar filing fee to reactivate their registration following registration closure per WAC 434-120-245 and pay applicable late fees.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-260 Surety bonds. ~~((In compliance with RCW 19.09.190 a registering commercial fund-raiser, as principal, shall submit proof of execution of a surety bond with one or more sureties whose liability in the aggregate will equal at least fifteen thousand dollars.)) Commercial fund-raisers must provide proof of bonding if the commercial fund-raiser engages, or plans to engage, in one or more of the ~~((following))~~ practices~~((:~~~~

~~(1) The fund-raiser directly or indirectly receives contributions from the public on behalf of any charitable organization; or~~

~~(2) The fund-raiser is compensated based upon funds raised or to be raised, number of solicitations made or to be made, or any similar method, even if the fund-raiser does not directly or indirectly receive the contributions; or~~

~~(3) The fund-raiser incurs or is authorized to incur expenses on behalf of the charitable organization; or~~

~~(4) Has not been registered with the secretary as a commercial fund-raiser for the preceding fiscal or accounting year shall execute a surety bond as principal with one or more sureties whose liability in the aggregate as such sureties will equal at least fifteen thousand dollars)) identified in RCW 19.09.191 (1)(a) through (d). The registering commercial fund-raiser shall submit proof of execution of a surety bond with one or more sureties whose liability in the aggregate will equal at least twenty-five thousand dollars.~~

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-307 Required filings. (1) Initial registration: Every trustee required to register by RCW 11.110.051 shall do so, in the time and in the manner described by RCW 11.110.060. Trustees shall use the registration form described by WAC 434-120-310, and file all other documents required by RCW 11.110.060. ~~((Trustees required to register shall also file with the secretary any later amendments to the trust instrument within four months of making the amendment.))~~

(2) Periodic reporting: Every trustee required to register by RCW 11.110.051 shall report annually as required by RCW 11.110.070. The annual reporting requirement is satisfied by filing the renewal form described by WAC 434-120-310(3) and filing a copy of the trust's federal informational

tax return, with the secretary of state no later than the fifteenth day of the fifth month after the end of its fiscal or accounting year.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-310 Charitable trust registration—Form and requirements. (1) Trustees registering under chapter 11.110 RCW shall use the registration form available in the office of the secretary of state. The secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 11.110 RCW shall not excuse the failure to comply.

(2) An initial registration form is not complete, and will not be accepted for filing, unless it includes:

(a) The trustee's name;
(b) The trustee's mailing address, and physical address if different;

(c) The name of the trust, its Federal Employer Identification Number, if any, or other identifying information sufficient to distinguish the trust from other registered trusts;

(d) A brief description of the charitable purposes of the trust, which may, at the trustee's option, include the names and addresses of any charitable organizations benefited by the trust;

(e) The market value of all trust assets invested for incoming-producing purposes as of the date on which the trustee received possession or control of the trust corpus;

(f) A copy of the governing instrument creating the trust;

(g) A statement indicating whether the trust is exempt from federal income tax, and, if exempt, the section of the Internal Revenue Code under which the trust is exempt from federal income tax;

(h) A copy of the letter by which the Internal Revenue Service granted the trust tax exempt status if the Internal Revenue Service has granted the trust such status;

(i) The end date of its current fiscal or accounting year;

(j) A financial report of the trust for the preceding fiscal or accounting year, including, but not limited to:

(i) Beginning assets;
(ii) Total revenue;
(iii) Grants, contributions, and the amount of expenditures used directly for program services;
(iv) Compensation of officers, directors, trustees, etc.;
(v) Total expenses; and
(vi) Ending assets.

(k) A copy of the trust's federal informational tax return (Form 990, 990PF, 990T, or 990EZ) reflecting the fiscal or accounting year contained in this report;

(l) The name and telephone number of the preparer of the trust registration, if different from trustee.

(3) The renewal registration form required by this rule shall be the same as the form described in WAC 434-120-310 except that the information required by WAC 434-120-310 (2)(d), (e), (f), (g) and (h) is not required.

(4) The trust shall report actual figures, and shall not use estimates, when completing a financial report.

(5) All charitable trust registrations shall be signed by ~~((the trustee, or, if the trustee is a corporation, of the corporate officer or employee responsible for the trust))~~:

(a) The trustee, person or entity legally responsible for the trust; or

(b) If the trustee is a corporation, the corporate officer or employee responsible for the trustee.

(6) A copy of the governing instrument creating the trust shall not be deemed sufficient to meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 10-15-036, filed 7/13/10, effective 8/13/10)

WAC 434-120-330 Annual fees. (1) Charitable trusts filing initial or renewal registrations must pay a fee of twenty-five dollars.

(2) The fee for expedited service is twenty dollars for a single on-line transaction within one charitable trust ~~((file))~~ registration. The fee for expedited service of paper documents (in-person~~((;))~~ or mail~~((; or fax))~~) is fifty dollars for single or multiple transactions within one charitable trust ~~((file))~~ registration. In addition, the filing fee for each transaction will apply.

(3) For a photocopy of an Internal Revenue Service Form 990EZ the fee is five dollars and for a copy of Form 990 or 990-PF the fee is ten dollars with a surcharge for forms exceeding 100 pages of copy, which is thirteen dollars for each fifty page increment.

(4) For a photocopy of a charitable trust registration form, the fee is five dollars.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-120-017	Office hours and location for charities program services.
WAC 434-120-030	Public records.
WAC 434-120-170	Use of particular names in solicitations.
WAC 434-120-180	Education program.
WAC 434-120-220	Change in status, notification.