

WSR 12-21-026
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed October 9, 2012, 9:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-091.

Title of Rule and Other Identifying Information: Division of child support (DCS) proposes to adopt new sections and amended sections in chapter 388-14A WAC, intended as technical corrections to the rules adopted under WSR 11-22-116 which took effect on December 3, 2011. Those rules were adopted to implement changes in the federal regulations concerning establishing and enforcing intergovernmental child support obligations.

AMENDED SECTIONS: WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-1025 What are the responsibilities of the division of child support?, 388-14A-1030 What kinds of services can the division of child support provide?, 388-14A-1036 Who can request DCS locate services?, 388-14A-1050 The division of child support cooperates with tribes and other states and (~~Indian tribes~~) countries for support enforcement purposes, 388-14A-1055 Can the division of child support collect support owed or assigned to another state, tribe or country?, 388-14A-2000 Who can receive child support enforcement services from the division of child support?, 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?, 388-14A-2015 Does DCS accept an application from someone who is not a resident of Washington state?, 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish?, 388-14A-3370 What legal defenses are available to a noncustodial parent when DCS seeks to enforce a support obligation?, 388-14A-3800 Once a support order is entered, can it be changed?, 388-14A-3810 Once an administrative child support order is entered, how long does the support obligation last?, 388-14A-3900 Does DCS review my support order to see if it should be modified?, 388-14A-3901 Under what circumstances does DCS review a support order for modification?, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-7100 The division of child support may register an order from a tribe or another state or country for enforcement or modification, 388-14A-7110 The division of child support may enforce interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state, 388-14A-7115 Are there special rules for a hearing on a notice seeking to enforce interest on a support order?, 388-14A-7120 When does DCS update the interest on an intergovernmental case for enforcement?, 388-14A-7400 What can I do if I want to contest an (~~interstate~~) intergovernmental order to withhold income served on my employer?, 388-14A-7500 What can I do if I am concerned about the release of my personal information in an (~~interstate~~) intergovernmental referral?, and 388-14A-8300 Who pays for genetic testing when paternity is an issue?

NEW SECTIONS: WAC 388-14A-7600 Does DCS provide the same services in an intergovernmental case as it provides in a case where both parties reside in the state of Washington?, 388-14A-7610 The division of child support complies with federal requirements regarding intergovernmental cases, 388-14A-7620 How does DCS provide information to another jurisdiction in an intergovernmental case?, 388-14A-7630 What limited services does DCS provide?, 388-14A-7640 Payment and recovery of costs in intergovernmental IV-D cases, 388-14A-7650 What kind of federal audit requirements are there for intergovernmental cases?, 388-14A-7700 How does the division of child support (DCS) decide that a new case is an intergovernmental case?, 388-14A-7710 What does the division of child support (DCS) do when it decides that a case is an intergovernmental case?, 388-14A-7720 What is the division of child support (DCS) required to do when Washington is the initiating jurisdiction in an intergovernmental case?, 388-14A-7800 What is the division of child support (DCS) required to do when Washington receives a request for intergovernmental child support services?, 388-14A-7810 What is the division of child support (DCS) required to do when DCS receives a request for a determination of controlling order?, and 388-14A-7820 What is the division of child support (DCS) required to do when DCS acts as the responding jurisdiction in an intergovernmental case?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on December 11, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 12, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98503, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 11, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 27, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New sections and/or amendments in chapter 388-14A WAC, intended as technical corrections to the rules adopted under WSR 11-22-116 which took effect on December 3, 2011. Those rules were adopted to implement changes in the federal regulations concerning establishing and enforcing intergovernmental child support obligations. The federal Office of Child Support Enforcement (OCSE) requested that DCS make these changes as a condition of approving the state plan under Title IV-D of the federal Social Security Act. Failure to do this would jeopardize funding for the child support program and the TANF block grant. These technical corrections are mainly to change references to "interstate cases" to "intergovernmental cases." DCS does not anticipate making any significant policy changes in this rule-making process, but such changes may be necessary in order to amend chapter 388-

14A WAC to comply with 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63 and 308.2. For a list of section numbers and titles, see above.

Reasons Supporting Proposal: DCS must adopt rules to implement federal regulations as part of its state plan under Title IV-D of the federal Social Security Act. Failure to adopt such rules could lead to a violation of the state plan requirements, which would jeopardize funding for the child support program and the TANF block grant. OCSE has requested that certain corrections be made in order for the state plan to be approved.

Statutory Authority for Adoption: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.-040(9), 74.20A.310.

Statute Being Implemented: RCW 74.20A.310.

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

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

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

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

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

October 5, 2012

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-01-002, filed 12/7/11, effective 1/7/12)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Absence of a court order" means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

"Accrued debt" means past-due child support which has not been paid.

"Acknowledged father" means a man who has established a father-child relationship under RCW 26.26.300 through 26.26.375.

"Adjudicated parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by the agency of an Indian tribe or another ((state's)) state or country's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

- (1) An order entered under chapter 34.05 RCW;
- (2) An agreed settlement or consent order entered under WAC 388-14A-3600; and
- (3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state or tribe, or the central authority of another country. In Washington, this is the division of child support (DCS) within the department of social and health services (DSHS).

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or "public assistance" means cash assistance under the temporary assistance for needy families (TANF) program, the aid to families with dependent children (AFDC) program, federally funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Annual fee" means the twenty-five dollar annual fee charged between October 1 and September 30 each year, required by the federal deficit reduction act of 2005 and RCW 74.20.040.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and "recipient" means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Assistance unit" means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

"Birth costs" means medical expenses incurred by the custodial parent or the state, tribe or country for the birth of a child.

"Cash medical support" is a term used in RCW 26.09.-105 and certain federal regulations to refer to amounts paid by an obligated parent to the other parent or to the state in order to comply with the medical support obligation stated in a child support order.

"Central authority" means the agency designated by a government to facilitate support enforcement with a foreign reciprocating country (FRC) pursuant to section 459A of the federal Social Security Act.

"Conditionally assigned arrears" means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Controlling order" means the only order issued or where multiple orders exist, the order determined by a tribunal to control prospective current support pursuant to the uniform interstate family support act (UIFSA), chapter 26.21A RCW.

"Controlling order state" means the state in which the only order was issued or, where multiple orders exist, the state in which the order determined by a tribunal to control prospective current support pursuant to the UIFSA was issued.

"Country" means a foreign country (or a political subdivision thereof) declared to be a Foreign Reciprocating Country (FRC) under 42 USC 659A and any foreign country (or political subdivision thereof) with which the state has entered into a reciprocal arrangement for the establishment and enforcement of support obligations to the extent consistent with federal law pursuant to 42 USC 659A.

"Court order" means a judgment, decree or order of a Washington state superior court, ~~((another state's))~~ or a court of comparable jurisdiction ~~(, or a tribal court)~~ of an Indian tribe or another state or country.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent or CP" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

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

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under RCW 26.26.300 through 26.26.375 or adjudication by the court.

"Differentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child and may justifiably be divided into "per child" amounts for each child covered by the support order, based on information contained in the support order.

"Differentiated support order" means a child support order which provides a monthly amount of child support for two or more children, and either provides a specific support obligation for each child or provides enough information in the order so that the monthly amount may justifiably be divided into a "per child" amount for each child covered by the support order.

"Disbursement" means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Distribution" means how a collection is allocated or split within a case or among multiple cases.

"Domestic partner" means a state registered domestic partner as defined in chapter 26.60 RCW.

"Earnings" means compensation paid or payable for personal service. Earnings include:

- (1) Wages or salary;
- (2) Commissions and bonuses;
- (3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;
- (4) Disability payments under Title 51 RCW;
- (5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;
- (6) Gains from capital, labor, or a combination of the two; and
- (7) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

- (1) Partnerships and associations;
- (2) Trusts and estates;
- (3) Joint stock companies and insurance companies;
- (4) Domestic and foreign corporations;
- (5) The receiver or trustee in bankruptcy; and
- (6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

"Family member" means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington, including an order entered by a tribunal in an Indian tribe or another state or country.

"Foreign reciprocating country" or FRC means a country which the federal government has declared to be a foreign reciprocating country, which means that the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to custodial parents who are residents of the United States, and that such procedures are substantially in conformity with the standards prescribed under title IV-D of the federal Social Security Act.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health care costs" means medical expenses. Certain statutes in chapter 26.19 RCW refer to medical expenses as health care costs.

"Health insurance" means insurance coverage for all medical services related to an individual's general health and

well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy. Health insurance coverage does not include medical assistance provided under chapter 74.09 RCW.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Initiating agency" or "initiating jurisdiction" means a state or Tribal IV-D agency or the central authority of another country, as defined in this rule, in which an individual has applied for or is receiving services.

"Intergovernmental IV-D case" means a IV-D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and child(ren) that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV-D case may include any combination of referrals between states, tribes, and countries. An intergovernmental IV-D case also may include cases in which a state agency is seeking only to collect support arrearages, whether owed to the family or assigned to the state.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

"Medical expenses" for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice

of support debt and the notice of support owed, means medical costs incurred on behalf of a child, which include:

- Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and
- Prescribed medical equipment and prescribed pharmacy products;
- Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;
- Dental and optometrical costs incurred on behalf of a child; and
- Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" means any combination of the following:

- (1) Health insurance coverage for a dependent child;
- (2) Amounts owed by one parent to the other parent as a monthly payment toward the premium paid by the other parent for health insurance coverage for a dependent child;
- (3) Amounts owed by a noncustodial parent to the state as a monthly payment toward the cost of managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment; and
- (4) Amounts owed by one parent to the other parent as his or her proportionate share of uninsured medical expenses for a dependent child.

"Monthly payment toward the premium" means a parent's contribution toward:

- Premiums paid by the other parent for insurance coverage for the child; or
- Amounts paid for managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

This contribution is based on the obligated parent's proportionate share of the premium paid, but may not exceed twenty-five percent of the obligated parent's basic support obligation.

"National Medical Support Notice" or **"NMSN"** is a federally mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent or NCP" means the natural or biological parent, adoptive parent, adjudicated parent, presumed parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Nonmedical expenses" means amounts incurred on behalf of a child which are not medical expenses as defined in this chapter. Nonmedical expenses include, but are not limited to, day care or other special childrearing expenses such

as tuition and long-distance transportation costs to and from the parents for visitation purposes.

"Obligated parent" means a parent who is required under a child support order to provide health insurance coverage or to reimburse the other parent for his or her share of medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

"Parent" means an individual who has established a parent-child relationship under RCW 26.26.101.

"Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Pass-through" means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrears" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Presumed parent" means a person who, by operation of law under RCW 26.26.116, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding.

"Private insurance" means accessible health insurance for a child provided by a parent without the need for service of a national medical support notice, and does not include health insurance provided by the state without a contribution from either parent.

"Proportionate share" or **"proportional share"** means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed on the worksheets when determining a parent's child support obligation under chapter 26.19 RCW.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

(1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

(2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responding agency" or "responding jurisdiction" means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV-D case.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"Self-support reserve" or "self support reserve" means an amount equal to one hundred twenty-five percent of the federal poverty guideline for a one-person family.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of ~~((another state's))~~ a court of comparable jurisdiction in an Indian tribe or another state or country.

"Support debt" means support which was due under a support order but has not been paid. This includes:

(1) Delinquent support;

(2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;

(3) A debt under RCW 74.20A.100 or 74.20A.270; or

(4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, enforcement of medical expenses, health insurance, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, medical expenses, birth costs, and child care or special child rearing expenses.

"Support order" means a court order, administrative order or tribal court order which contains a determination, finding, decree or order that sets a child support obligation (including medical support) and orders either the payment of a set or determinable amount of money for current support and/or a support debt, or the provision of medical support, or both.

"Temporarily assigned arrears" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy

families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-D agency" or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage, and includes such courts, agencies or entities in other states or countries.

"Underlying order" means an existing child support order for which DCS serves a notice of support owed under RCW 26.23.110 to determine a sum certain support obligation.

"Undifferentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child which cannot justifiably be divided into "per child" amounts for each child covered by the support order.

"Undifferentiated support order" means a child support order which provides a monthly amount of child support for two or more children, but does not provide a specific support obligation for each child or does not contain enough information in either the order or the worksheets associated with the order to justify dividing the monthly amount into "per child" amounts for each child covered by the support order.

"Uninsured medical expenses": For the purpose of establishing or enforcing support obligations means:

(1) Medical expenses not paid by insurance for medical, dental, prescription and optometrical costs incurred on behalf of a child; and

(2) Premiums, copayments, or deductibles incurred on behalf of a child.

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"WSSR" is the Washington state support registry.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-1025 What are the responsibilities of the division of child support? (1) The division of child support (DCS) provides support enforcement services when:

(a) The department of social and health services pays public assistance or provides foster care services;

(b) A former recipient of public assistance is eligible for services, as provided in WAC 388-14A-2000 (2)(c);

(c) A custodial parent (CP) or noncustodial parent (NCP) requests nonassistance support enforcement services under RCW 74.20.040 and WAC 388-14A-2000;

(d) A support order or wage assignment order under chapter 26.18 RCW directs the NCP to make support payments through the Washington state support registry (WSSR);

(e) A support order under which there is a current support obligation for dependent children is submitted to the WSSR;

(f) A former custodial parent (CP) requests services to collect a support debt accrued under a court or administrative support order while the child(ren) resided with the CP;

(g) A child support enforcement agency in another state or foreign country requests support enforcement services; or

(h) A child support agency of an Indian tribe requests support enforcement services.

(2) DCS takes action under chapters 26.23 and 74.20A RCW to establish, enforce and collect child support obligations.

(a) DCS refers cases to the county prosecuting attorney or attorney general's office when judicial action is required.

(b) If DCS has referred a case to the county prosecuting attorney or attorney general's office and the CP has been granted good cause level A, DCS does not share funding under Title IV-D for any actions taken by the prosecutor or attorney general's office once DCS advises them of the good cause finding.

(3) DCS does not take action on cases where the community services office (CSO) has granted the CP good cause not to cooperate under WAC 388-422-0020, when the CSO grants "level A good cause." If the CSO grants "level B good cause," DCS proceeds to establish and/or enforce support obligations but does not require the CP to cooperate with DCS. WAC 388-14A-2065 and 388-14A-2070 describe the way DCS handles cases with good cause issues.

(4) DCS establishes, maintains, retains and disposes of case records in accordance with the department's records management and retention policies and procedures adopted under chapter 40.14 RCW.

(5) DCS establishes, maintains, and monitors support payment records.

(6) DCS receives, accounts for and distributes child support payments required under court or administrative orders for support.

(7) DCS charges and collects fees as required by federal and state law regarding the Title IV-D child support enforcement program.

(8) DCS files a satisfaction of judgment when we determine that a support obligation is either paid in full or no longer legally enforceable. WAC 388-14A-2099 describes the procedures for filing a satisfaction of judgment. WAC 388-14A-2099(4) describes how DCS determines a support obligation is satisfied or no longer legally enforceable.

(9) Based on changes in federal statutes and regulations, DCS establishes or changes the rules regarding its responsibilities when acting as either the initiating agency or responding agency in an intergovernmental child support case.

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 388-14A-1030 What kinds of services can the division of child support provide? The services provided by the division of child support include, but are not limited to the following:

- (1) Receiving payments and distributing the payments (see WAC 388-14A-5000);
- (2) Establishing or modifying administrative child support orders (see WAC 388-14A-3100 and 388-14A-3925);
- (3) Enforcing and modifying court orders for child support or maintenance (see WAC 388-14A-3304, 388-14A-3310 and 388-14A-3900);
- (4) Referral to the prosecuting attorney for establishment of paternity;
- (5) Providing locate services as provided in WAC 388-14A-1035;
- (6) Referral for welfare to work services in conjunction with other parts of DSHS, the employment security department (ESD) and private contractors;
- (7) Cooperation with the IV-D agencies of Indian tribes and other states, and ((Indian tribes)) the central authorities of other countries (see WAC 388-14A-1060); and
- (8) Providing any other services allowed by the state plan and applicable state and federal law.

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

WAC 388-14A-1036 Who can request DCS locate services? DCS provides locate services for:

- (1) Persons receiving public assistance for the benefit of dependent children;
- (2) Any agency or attorney of another state or country seeking to collect support obligations under an agreement entered into with DCS;
- (3) A court which has the authority to issue an order against a noncustodial parent (NCP) for the support and maintenance of a child;
- (4) The custodial parent (CP), legal guardian, attorney or agent of a child who does not receive public assistance, and has not applied for full support enforcement services;
- (5) The IV-D agency of another state;

(6) The child support agency of an Indian tribe or another country; and

(7) Those persons authorized by 45 C.F.R. 303.15 to use the FPLS in connection with parental kidnaping or child custody cases.

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

WAC 388-14A-1050 The division of child support cooperates with tribes and other states and ((Indian tribes)) countries for support enforcement purposes. The division of child support (DCS) cooperates with the IV-D agencies of tribes and other states ((and of Indian tribes)) and the central authorities of other countries, according to rules and policies set by the Secretary of the Department of Health and Human Services and/or the federal Office of Child Support Enforcement (OCSE). Areas of cooperation include:

- (1) Establishing paternity;
- (2) Locating a noncustodial parent (NCP) who resides in Washington;
- (3) Enforcing the support obligation of an NCP who resides in Washington but whose support order was entered by an Indian tribe or another state or country; and
- (4) Any other functions required under a Title IV-D plan.

AMENDATORY SECTION (Amending WSR 06-06-078, filed 2/28/06, effective 3/31/06)

WAC 388-14A-1055 Can the division of child support collect support owed or assigned to another state, tribe or country? (1) The division of child support (DCS) may, at the request of an Indian tribe or another state, collect child support which has been assigned to that tribe, state under 42 U.S.C. 608 (a)(3)(A), or another country according to the laws of that country.

(2) DCS uses the remedies in chapters 26.23, 74.20 and 74.20A RCW to collect support on behalf of another state, tribe, country or IV-D agency.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-2000 Who can receive child support enforcement services from the division of child support?

(1) The division of child support (DCS) provides payment processing and records maintenance services (called "payment services only") to parties to a court order who are not receiving a public assistance grant when:

(a) A Washington superior court order, tribal court order, administrative order, or wage assignment order under chapter 26.18 RCW directs payments through DCS or through the Washington state support registry (WSSR);

(b) The custodial parent (CP) of a dependent child or a noncustodial parent (NCP) requests payment services only, provided that:

(i) An NCP's request for payment services only may not cause a reduction of service from the level of service provided under section (2) of this section; and

(ii) The support obligation is set by a Washington state superior court order, tribal court order, administrative order

or wage assignment order, directing payment to DCS or to WSSR.

(2) DCS provides full support enforcement services under Title IV-D of the Social Security Act to custodial parents or noncustodial parents who are not receiving a public assistance grant when:

(a) The custodial parent or former physical custodian of a child requests support enforcement services;

(b) The noncustodial parent of a dependent child requests support enforcement services;

(c) An NCP submits a support order for inclusion in or a support payment to the WSSR, together with an application for support enforcement services;

(d) A public assistance recipient stops receiving a cash grant under the temporary assistance for needy families program;

(e) The department provides medicaid-only benefits to a CP on behalf of a dependent child, unless the recipient of the medicaid-only benefits declines support enforcement services not related to paternity establishment, medical support establishment or medical support enforcement; ~~((or))~~

(f) A man requests paternity establishment services alleging he is the father of a dependent child; or

(g) An Indian tribe or another state or country requests services in an intergovernmental case.

(3) DCS provides payment processing, records maintenance, paternity establishment, medical support establishment, and medical support enforcement services when a recipient of medicaid-only benefits declines support enforcement services in writing.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?

(1) If you are not receiving public assistance, you can apply for support enforcement services. Your case is called a non-assistance case. A nonassistance case receives the same level of services as a case that was opened because of the payment of public assistance.

(2) Generally, the person applying for nonassistance support enforcement services is the custodial parent or former custodial parent of a child. However, the noncustodial parent may apply for services as well, as provided in WAC 388-14A-2000 (2)(b), (c) and (f).

(3) A person wishing to apply for nonassistance support enforcement services must submit a written application for support enforcement services except as provided in WAC 388-14A-2000 (2)(d); and

(a) Have or have had physical custody of the child for whom support is sought, or for whom a support debt has accrued, or be the person with whom the child resided the majority of the time for which support is sought; or

(b) Be the noncustodial parent.

(4) The applicant must:

(a) Give consent for the division of child support (DCS) to take an assignment of earnings from the noncustodial parent (NCP) if the parents are still married;

(b) Agree to send to DCS any support payments received directly from the NCP within eight days of receipt;

(c) Agree to direct a payor or forwarding agent to make payments to the Washington state support registry (WSSR);

(d) Agree not to hire an attorney or collection agency, or apply to any other state's IV-D agency to collect the same support obligation or support debt, without notifying DCS;

(e) Complete, sign, date and submit to DCS the application form and any other required documents;

(f) Supply copies of divorce and dissolution decrees, support orders and modification orders, and any related documents affecting a support obligation;

(g) Provide a statement of the amount of support debt owed by the NCP;

(h) Include or attach a list, by date, of the support payments received from the NCP during the time period for which the CP seeks support; and

(i) Pay any applicable fee imposed by state or federal law.

(5) If someone other than the CP has legal custody of the child under a court order, the CP must affirm that:

(a) The CP has not wrongfully deprived the legal custodian of custody; and

(b) The person with legal custody has not been excused from making support payments by a court or administrative tribunal.

(6) See WAC 388-14A-2015 regarding requests for intergovernmental child support services received from a foreign reciprocating country (FRC) or from a custodial parent who is a resident of an FRC.

(7) See WAC 388-14A-7660 regarding the assessment of costs in an intergovernmental case where the initiating jurisdiction is an FRC.

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

WAC 388-14A-2015 Does DCS accept an application from someone who is not a resident of Washington state?

(1) If you are not a resident of the state of Washington but you are applying for services, you must swear or affirm that there is not an open IV-D case in another state.

(2) The division of child support (DCS) may decline the application for nonassistance support enforcement services if:

(a) DCS already has an open case for you which was opened at the request of another state; or

(b) Neither the custodial parent nor the noncustodial parent reside, work, or own any assets in the state of Washington.

(3) If you are a custodial parent residing in a foreign reciprocating country (FRC), either you or the child support agency of your country may request intergovernmental child support services from DCS. As provided under 42 USC 654 (32)(C):

(a) No formal application for services is required; and

(b) DCS does not assess costs against either the FRC or the custodial parent.

(4) See WAC 388-14A-7660 regarding costs assessed against the noncustodial parent in an intergovernmental case where the initiating jurisdiction is an FRC.

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

WAC 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish? (1) When no public assistance is being paid to the custodial parent (CP) and the children, the division of child support (DCS) starts the claim for support as of the date:

(a) DCS receives the application for nonassistance services if the CP applies directly to DCS for services; or

(b) An Indian tribe or another state or ((Indian tribe)) country received the application for nonassistance services or the actual date the ((other)) tribe, state, or ((tribe)) country requests that child support start, whichever is later, if the ((other state or Indian tribe)) initiating jurisdiction requests DCS to establish a support order.

(2) When the children are receiving medicaid-only benefits, DCS starts the claim for support as of the date the medicaid benefits began. See WAC 388-14A-2005(4) to determine whether DCS seeks to establish medical support only for a particular case.

(3) This section does not limit in any way the right of the court to order payment for back support as provided in RCW 26.26.130 and 26.26.134 if the case requires paternity establishment.

(4) When an Indian tribe or another state or ((an Indian tribe)) country is paying public assistance to the CP and children, DCS starts the claim for support as of the date specified by the ((other)) tribe, state, or ((tribe)) country.

(5) For the notice and finding of parental responsibility, WAC 388-14A-3120(9) limits the back support obligation.

(6) When the state of Washington is paying public assistance to the CP and/or the children, the following rules apply:

(a) For support obligations owed for months on or after September 1, 1979, DCS must exercise reasonable efforts to locate the noncustodial parent (NCP);

(b) DCS serves a notice and finding of financial or parental responsibility within sixty days of the date the state assumes responsibility for the support of a dependent child on whose behalf support is sought;

(c) If DCS does not serve the notice within sixty days, DCS loses the right to reimbursement of public assistance payments made after the sixtieth day and before the notice is served;

(d) DCS does not lose the right to reimbursement of public assistance payments for any period of time:

(i) During which DCS exercised reasonable efforts to locate the NCP; or

(ii) For sixty days after the date on which DCS received an acknowledgment of paternity for the child for whom the state has assumed responsibility, and paternity has not been established.

(7) The limitation in subsection (6) does not apply to:

(a) Cases in which the physical custodian is claiming good cause for not cooperating with the department; and

(b) Cases where parentage is an issue and:

(i) Has not been established by superior court order; or
(ii) Is not the subject of a presumption under RCW 26.26.320.

(8) DCS considers a prorated share of each monthly public assistance payment as paid on each day of the month.

AMENDATORY SECTION (Amending WSR 03-17-013, filed 8/12/03, effective 9/12/03)

WAC 388-14A-3370 What legal defenses are available to a noncustodial parent when DCS seeks to enforce a support obligation? (1) A noncustodial parent (NCP) who objects to a notice and finding of financial, parental, or medical responsibility has the burden of establishing defenses to liability. Defenses include, but are not limited to:

(a) Proof of payment;

(b) The existence of a superior court order, tribal court order, or administrative order that sets the NCP's support obligation or specifically relieves the NCP of a support obligation for the child(ren) named in the notice;

(c) The party is not a responsible parent as defined by RCW 74.20A.020(7);

(d) The amount requested in the notice is inconsistent with the Washington state child support schedule, chapter 26.19 RCW;

(e) Equitable estoppel, subject to WAC 388-14A-6500; or

(f) Any other matter constituting an avoidance or affirmative defense.

(2) A dependent child's or a custodial parent's ineligibility to receive public assistance is not a defense to the assessment of a support obligation.

(3) An NCP may be excused from providing support for a dependent child if the NCP is the legal custodian of the child and has been wrongfully deprived of physical custody of the child. The NCP may be excused only for any period during which the NCP was wrongfully deprived of custody. The NCP must establish that:

(a) A court of competent jurisdiction of any state, tribe or country has entered an order giving legal and physical custody of the child to the NCP;

(b) The custody order has not been modified, superseded, or dismissed;

(c) The child was taken or enticed from the NCP's physical custody and the NCP has not subsequently assented to deprivation. Proof of enticement requires more than a showing that the child is allowed to live without certain restrictions the NCP would impose; and

(d) Within a reasonable time after deprivation, the NCP exerted and continues to exert reasonable efforts to regain physical custody of the child.

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 388-14A-3800 Once a support order is entered, can it be changed? (1) ((Only the court that entered the order can modify a support order entered by a superior court or tribal court)) A support order entered by a superior court may only be modified by a superior court or a court of comparable

jurisdiction of an Indian tribe or another state or country. The uniform interstate family support act (UIFSA, adopted in Washington as chapter 26.21A RCW) determines which state, tribe or country may modify the order.

(2) If the order specifically states how the amount of support may be adjusted, the division of child support (DCS) may bring an administrative action under RCW 26.23.110 and WAC 388-14A-3310.

~~((2))~~ (3) As provided in WAC 388-14A-3900, DCS may review any support order to determine whether DCS should petition to modify the support provisions of the order.

~~((3))~~ (4) Either DCS, the CP or the NCP may petition to modify an administrative order under WAC 388-14A-3925. Acting as a responding jurisdiction, DCS may petition to modify an administrative order at the request of the initiating jurisdiction.

~~((4))~~ (5) Under appropriate circumstances, an administrative support order may be vacated. See WAC 388-14A-3700.

AMENDATORY SECTION (Amending WSR 05-14-101, filed 6/30/05, effective 7/31/05)

WAC 388-14A-3810 Once an administrative child support order is entered, how long does the support obligation last? (1) A noncustodial parent's obligation to pay support under an administrative order continues until:

(a) A superior or tribal court order supersedes the order, either as provided by RCW 74.20A.055(7) or by the uniform interstate family support act (UIFSA);

(b) The order is modified under WAC 388-14A-3925;

(c) The child reaches eighteen years of age;

(d) The child is emancipated;

(e) The child marries;

(f) The child becomes a member of the United States armed forces;

(g) The child or the responsible parent die;

(h) A responsible stepparent's marriage is dissolved;

(i) The parties to the order marry or remarry, as provided in WAC 388-14A-3100(3); or

(j) A superior court order terminates the responsible parent's liability as provided under RCW 26.16.205.

(2) As an exception to the above rule, a noncustodial parent's obligation to pay support under an administrative order continues for a dependent child over the age of eighteen if the child is under age nineteen, and participating full-time in a secondary school program or the same level of vocational or technical training, as defined in WAC 388-404-0005 (1)(b). However, if the child has already met the requirements to finish the educational program, the child is no longer considered to be dependent.

(3) A noncustodial parent's obligation to pay support under an administrative order may be temporarily suspended when the:

(a) Noncustodial parent (NCP) resides with the child for whom support is sought for purposes other than visitation;

(b) NCP reconciles with the child and the custodial parent; or

(c) Child returns to the residence of the NCP from a foster care placement, for purposes other than visitation.

(4) When the NCP's obligation to pay current support on a case is suspended under subsection (3) of this section, the division of child support (DCS) informs the NCP that the obligation is suspended, in writing, sent by regular mail to the NCP's last known address.

(5) If circumstances causing an NCP's support obligation to be temporarily suspended change, the support obligation resumes. DCS sends the NCP a notice that the obligation to make current support payments has resumed.

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

WAC 388-14A-3900 Does DCS review my support order to see if it should be modified? (1) When the division of child support (DCS) is providing support enforcement services under Title IV-D of the Social Security Act, DCS must:

(a) Review a superior court or administrative order for child support to determine whether DCS will petition to modify the child support provisions of the order; or

(b) Evaluate an ~~((interstate))~~ intergovernmental case to determine whether to refer the case to an Indian tribe or another state or ((an Indian tribe)) country for review of the support order for modification.

(2) Recipients of payment services only under WAC 388-14A-2000(1) are not eligible for a review of their support order under this section until they have submitted an application for support enforcement services.

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

WAC 388-14A-3901 Under what circumstances does DCS review a support order for modification? (1) The division of child support (DCS) reviews ((orders for)) child support orders under WAC 388-14A-3900 when~~((:~~

~~((a))~~ DCS has enough locate information to obtain personal service on both parties to the order; and;

~~((b))~~ (a) The department is paying public assistance or has determined that the children are eligible for medical assistance, and thirty-five months have passed since:

(i) DCS last reviewed the order under this section;

(ii) The order was last modified; or

(iii) The order was entered~~((:))~~ ; or

~~((c))~~ (b) A party to the order, ~~((or another state's))~~ the IV-D agency of a tribe or another state, or the central authority of another country, submits a request for review to DCS and thirty-five months have passed since:

(i) DCS or another ~~((state's))~~ state or tribe's IV-D agency last reviewed the order under this section;

(ii) The order was last modified; or

(iii) The order was entered.

(2) DCS may refer a request for review to another ~~((state's))~~ state or tribe's IV-D agency for action.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3925 Who can ask to modify an administrative support order? (1) The division of child support (DCS), the custodial parent (CP) or the noncustodial

parent (NCP) may file a petition and request a hearing to prospectively modify an administrative order for child support. The request must be in writing and must state:

- (a) Any circumstances that have changed;
- (b) Any relief requested; and
- (c) The proposed new support amount.

(2) The petitioning party must file the request for modification with DCS.

(3) Acting as a responding jurisdiction, DCS may file a petition to prospectively modify an administrative order for child support on behalf of an initiating jurisdiction in an inter-governmental case.

(4) DCS serves a copy of the request for modification and notice of hearing on all other parties by first class mail at their address last known to DCS.

~~((4))~~ (5) DCS, the administrative law judge (ALJ), or the department review judge:

(a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and

(b) May only modify an order issued by a tribunal in another state according to the terms of RCW 26.21A.550.

~~((5))~~ (6) A request to add a requirement for the custodial parent (CP) to provide health insurance coverage, or to add a provision in the order to include the CP's share of medical expenses, is not by itself a sufficient basis for modification of the order.

~~((6))~~ (7) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.

~~((7))~~ (8) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

(8) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

- (a) Dismiss the petition; or
- (b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.

~~((9))~~ (10) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

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.

PART G - ~~((INTERSTATE))~~ INTERGOVERNMENTAL ISSUES

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

WAC 388-14A-7100 The division of child support may register an order from a tribe or another state or country for enforcement or modification. (1) A ~~((support enforcement agency, or a party to a))~~ child support order or an income-withholding order for support issued by a tribunal

of another state or jurisdiction~~((;))~~ may ~~((register the order))~~ be registered in this state for enforcement pursuant to chapter 26.21A RCW at the request of a party to the order or at the request of the support enforcement agency of an Indian tribe or of another state or country.

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

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

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

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

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

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

(a) The notice must inform the nonregistering party:

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

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

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

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

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

(b) The notice must be:

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

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

(a) The request is from:

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

(ii) An Indian tribe;

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

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

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

WAC 388-14A-7120 When does DCS update the interest on an intergovernmental case for enforcement?

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

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

(a) The interest enforcement letter is based upon the annual notification of accrued interest from the IV-D agency or an updated interest calculation from a certified public accountant (CPA) or a foreign country's equivalent of a CPA.

(b) DCS sends the interest enforcement letter to the non-custodial parent (NCP), by first class mail to the NCP's last known address.

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

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

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

(4) An NCP who objects to an interest enforcement letter must contact the IV-D agency or the CPA or equivalent who did the calculation to dispute the amount of interest claimed.

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

WAC 388-14A-7400 What can I do if I want to contest an ~~((interstate))~~ intergovernmental order to withhold income served on my employer? (1) RCW 26.21A.425 provides that a noncustodial parent (NCP) may contest the validity or enforcement of an income-withholding order issued ~~((to))~~ by an Indian tribe or another state or country and received directly by an employer in this state.

(2) Acting as an administrative tribunal under chapter 26.21A RCW, the division of child support (DCS) does not have the authority to quash income-withholding orders.

(3) An NCP who seeks to contest an income-withholding order as described in subsection (1) must seek relief in the superior court under RCW 26.18.140.

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

WAC 388-14A-7500 What can I do if I am concerned about the release of my personal information in an ~~((interstate))~~ intergovernmental referral? (1) When the division of child support (DCS) refers a case to an Indian tribe or another state or country, DCS must provide personal information regarding the parties to that other ~~((state))~~ jurisdiction. DCS notifies the party residing in Washington that we are preparing to refer your case and that we must release your personal information.

(2) If you believe that it would be dangerous for DCS to release your personal information to the ~~((other state))~~ responding jurisdiction (RJ), you may make a request for nondisclosure of your personal information under RCW 26.21A.255.

(3) The way DCS handles your request for nondisclosure depends on what version of the Uniform Interstate Family Support Act (UIFSA) has been adopted by the ~~((state))~~ RJ where DCS is referring your case.

(a) The ~~((state))~~ RJ may have enacted a version of UIFSA which is similar to the version enacted by the state of Washington as chapter 26.21A RCW (known as "UIFSA 2001"); ~~((or))~~

(b) The ~~((state))~~ RJ may have enacted a version of UIFSA which is similar to the version which was formerly enacted by the state of Washington as chapter 26.21 RCW (known as "UIFSA 1996"); or

(c) The RJ may not have enacted UIFSA or any similar law.

(4) If DCS is making an intergovernmental referral to ~~((another state))~~ an RJ which has enacted UIFSA 2001:

(a) DCS must disclose your personal information to the ~~((other state))~~ RJ.

(b) DCS sends to the ~~((other state))~~ RJ a declaration for nondisclosure of information which you have signed under penalty of perjury.

(c) The ~~((other state))~~ RJ must seal your personal information and may not disclose that information to the other party or to the public unless a tribunal orders disclosure of the information in the interest of justice, after a hearing in which the tribunal considers your (or your child's) health, safety and liberty.

(5) If DCS is making an intergovernmental referral to ~~((another state))~~ an RJ which has enacted UIFSA 1996:

(a) DCS holds a conference board under WAC 388-14A-6400.

(b) If the conference board finds that your (or your child's) health, safety or liberty would be unreasonably put at risk by the disclosure of the information, the conference board issues a nondisclosure finding.

(c) DCS does not disclose your personal information to the ~~((other state))~~ RJ, and instead provides the ~~((other state))~~ RJ with the nondisclosure finding.

(6) If DCS is making an intergovernmental referral to an RJ which has not adopted UIFSA or a similar law, DCS follows the procedure set out in subsection (5) of this section.

NEW SECTION

WAC 388-14A-7600 Does DCS provide the same services in an intergovernmental case as it provides in a case where both parties reside in the state of Washington? (1) When acting as the responding jurisdiction in an intergovernmental child support case, the division of child support (DCS) provides the full range of services available under our state plan pursuant to Title IV-D of the federal Social Security Act to:

- (a) Another state;
 - (b) A Tribal IV-D program or child support agency; and
 - (c) A country as defined in 45 CFR 301.1.
- (2) The DCS central registry provides the same services for all IV-D cases, including intergovernmental cases.
- (3) See WAC 388-14A-1030 for a list of the services provided by DCS.

NEW SECTION

WAC 388-14A-7610 The division of child support complies with federal requirements regarding intergovernmental cases. As required under 45 CFR 303.7 (a)(3), the division of child support (DCS) ensures that its organizational structure and staff are adequate to provide for the administration or supervision of the functions specified in 45 CFR 303.20(c) for its intergovernmental IV-D caseload, including but not limited to:

- (1) Intake;
- (2) Establishment of paternity;
- (3) Location of noncustodial parents;
- (4) Establishment of child support orders;
- (5) Collection and/or enforcement;
- (6) Monitoring; and
- (7) Review and adjustment of orders.

NEW SECTION

WAC 388-14A-7620 How does DCS provide information to another jurisdiction in an intergovernmental case? (1) The division of child support (DCS) uses federally-approved forms in intergovernmental IV-D cases, unless a country has provided alternative forms as part of its chapter in A Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries.

(2) DCS uses electronic means to transmit these forms unless a paper version is required under the laws of Washington State or the other jurisdiction.

(3) For intergovernmental cases, DCS transmits requests for information and provides requested information electronically to the greatest extent possible.

(4) When using a paper version of a form, DCS provides one complete set of required documents unless the laws of the responding jurisdiction require multiple copies.

(5) When the child support agency of a tribe or another state or country requests any order or payment record information in order to perform a controlling order determination

and reconciliation of arrearages, DCS provides that information within thirty working days of a request, or notifies the state IV-D agency when the information will be provided.

(6) DCS notifies the other agency within ten working days of receipt of new information on the case.

NEW SECTION

WAC 388-14A-7630 What limited services does DCS provide? (1) For intergovernmental cases, the division of child support (DCS) cooperates with requests for the following limited services:

- (a) Quick locate;
 - (b) Service of process;
 - (c) Assistance with discovery;
 - (d) Assistance with genetic testing;
 - (e) Teleconferenced hearings;
 - (f) Administrative reviews;
 - (g) High-volume automated administrative enforcement in interstate cases under section 466(a)(14) of the Act; and
 - (h) Copies of court orders and payment records.
- (2) DCS may also honor requests for other limited services as appropriate.

NEW SECTION

WAC 388-14A-7640 Payment and recovery of costs in intergovernmental IV-D cases. (1) When acting as the responding agency in an intergovernmental IV-D case, the division of child support (DCS) pays the costs it incurs in processing the case, including the costs of genetic testing.

(2) See WAC 388-14A-8300 for the rules regarding payment of genetic testing costs in any IV-D case.

(3) DCS may recover its costs of providing services in intergovernmental nonassistance (both never-assistance and former-assistance) cases as provided under 45 CFR 302.33 (d), but when the initiating jurisdiction is a foreign reciprocating country (FRC):

(a) DCS may not assess costs against either the FRC or the custodial parent residing in an FRC; and

(b) DCS may assess costs against the noncustodial parent in such a case.

NEW SECTION

WAC 388-14A-7650 What kind of federal audit requirements are there for intergovernmental cases? (1) When the division of child support (DCS) is acting as either the initiating jurisdiction (IJ) or the responding jurisdiction (RJ) in an intergovernmental case, there are certain audit requirements which must be met in at least seventy-five percent of the cases reviewed.

(2) For all intergovernmental cases requiring services during the review period, DCS must determine the last required action on each case and determine whether the action was taken during the appropriate time frame.

(3) DCS must use the audit criteria set forth in 45 CFR 308.2(g) when reviewing intergovernmental cases.

NEW SECTION

WAC 388-14A-7700 How does the division of child support (DCS) decide that a new case is an intergovernmental case? When the division of child support (DCS) opens a new IV-D case, DCS must:

- (1) Determine whether or not there is already an existing child support order or orders in effect in the case. DCS uses the state and federal case registries, state records, information provided by the recipient of services, and other relevant information;
- (2) Determine which jurisdiction may make a determination of the controlling order and reconciliation of arrearages if there are multiple orders; and
- (3) Determine whether the noncustodial parent (NCP) is in another jurisdiction and whether it is appropriate to use its one-state remedies to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding.

NEW SECTION

WAC 388-14A-7710 What does the division of child support (DCS) do when it decides that a case is an intergovernmental case? Within twenty calendar days of completing the determinations required in WAC 388-14A-7700 and, if appropriate, receipt of any necessary information needed to process the case, the division of child support:

- (1) Asks the appropriate intrastate tribunal, or refers the case to the appropriate responding state IV-D agency, for a determination of the controlling order and a reconciliation of arrearages if such a determination is necessary; and
- (2) Refers any intergovernmental IV-D case to the appropriate state central registry, Tribal IV-D program, or central authority of a country for action, if one-state remedies are not appropriate.

NEW SECTION

WAC 388-14A-7720 What is the division of child support (DCS) required to do when Washington is the initiating jurisdiction in an intergovernmental case? When acting as the initiating jurisdiction in an intergovernmental case, the division of child support (DCS) must:

- (1) Provide the responding jurisdiction (RJ) sufficient, accurate information to act on the case by submitting with each case any necessary documentation and intergovernmental forms required by the RJ;
- (2) Provide the RJ with an updated intergovernmental form and any necessary additional documentation within thirty calendar days of receipt of the request for information, or notify the RJ when the information will be provided;
- (3) Notify the RJ at least annually, and upon request in an individual case, of interest charges, if any, owed on overdue support under an initiating state order being enforced in the RJ;
- (4) Submit all past-due support owed in IV-D cases that meet the certification requirements under §303.72 of this part for federal tax refund offset;
- (5) Send a request for review of a child support order to another state within twenty calendar days of determining that

a request for review of the order should be sent to the other state and of receipt of information from the requestor necessary to conduct the review in accordance with section 466 (a)(10) of the Act and §303.8 of this part;

(6) Distribute and disburse any support collections received in accordance with this section and §§302.32, 302.51, and 302.52 of this chapter, sections 454(5), 454B, 457, and 1912 of the Act, and instructions issued by the office;

(7) Notify the RJ within ten working days of case closure that DCS has closed its case, and the basis for case closure as provided in WAC 388-14A-2083;

(8) Instruct the RJ to close its intergovernmental case and to stop any withholding order or notice the RJ has sent to an employer before DCS transmits a withholding order or notice, with respect to the same case, to the same or another employer unless the two states reach an alternative agreement on how to proceed; and

(9) If DCS has closed its case pursuant to WAC 388-14A-2083 and has not notified the RJ to close its corresponding case, DCS must make a diligent effort to locate the obligee, including use of the federal parent locator service and the state parent locator service, and accept, distribute and disburse any payment received from the RJ.

NEW SECTION

WAC 388-14A-7800 What is the division of child support (DCS) required to do when Washington receives a request for intergovernmental child support services? When the division of child support (DCS) receives a request for intergovernmental child support enforcement services from an Indian tribe, another state or another country, DCS is known as the responding jurisdiction (RJ). As the RJ, DCS must:

(1) Accept and process an intergovernmental request for services, regardless of whether the initiating jurisdiction (IJ) elected not to use remedies that may be available under the law of that jurisdiction;

(2) Within seventy-five calendar days of receipt of an intergovernmental form and documentation:

(a) Provide locate services under WAC 388-14A-1035, if the request is for locate services or if the form or documentation does not include adequate locate information on the noncustodial parent (NCP);

(b) If unable to proceed with the case because of inadequate documentation, notify the IJ of the necessary additions or corrections to the form or documentation; and

(c) If the documentation received with a case is incomplete and cannot be remedied without the assistance of the IJ, process the case to the extent possible pending necessary action by the IJ.

(3) If DCS locates the NCP in another state, DCS returns the intergovernmental referral to the IJ within ten days.

(a) DCS provides the NCP's locate information to the IJ.

(b) Upon request of the IJ, DCS may forward or transmit the intergovernmental referral to the central registry in the state where the NCP has been located.

NEW SECTION

WAC 388-14A-7810 What is the division of child support (DCS) required to do when DCS receives a request for a determination of controlling order? When the division of child support (DCS) receives an intergovernmental request for a determination of controlling order, DCS must:

- (1) File the controlling order determination request with the appropriate tribunal in its state within thirty calendar days of receipt of the request or location of the noncustodial parent, whichever occurs later; and
- (2) Notify the initiating state agency, the controlling order state and any state where a support order in the case was issued or registered, of the controlling order determination and any reconciled arrearages within thirty calendar days of receipt of the determination from the tribunal.

NEW SECTION

WAC 388-14A-7820 What is the division of child support (DCS) required to do when DCS acts as the responding jurisdiction in an intergovernmental case? (1) When the division of child support (DCS) opens a IV-D case upon receipt of a request for intergovernmental child support enforcement services from an Indian tribe, another state or another country and acts as the responding jurisdiction (RJ), DCS provides any necessary services as it would in any other IV-D case including:

- (a) Establishing paternity and, if appropriate, attempting to obtain a judgment for costs of paternity establishment;
 - (b) Establishing a child support order;
 - (c) Reporting overdue support to consumer reporting agencies, in accordance with WAC 388-14A-2160;
 - (d) Processing and enforcing orders referred by the initiating jurisdiction (IJ), whether pursuant to the uniform interstate family support act (UIFSA) or other legal processes, using all appropriate remedies available;
 - (e) Submitting the case for such federal enforcement techniques as DCS determines to be appropriate;
 - (f) Collecting and monitoring any support payments from the noncustodial parent and forwarding payments to the location specified by the IJ. In doing so, DCS:
 - (i) Includes sufficient information to identify the case;
 - (ii) Indicates the date of collection as defined in WAC 388-14A-5001(3); and
 - (iii) Includes the RJ's case identifier and locator code, in accordance with federal regulations.
 - (g) Reviewing and adjusting child support orders upon request, as provided in WAC 388-14A-3900 through 388-14A-3907.
- (2) DCS provides timely notice to the IJ in advance of any hearing that may result in the establishment, modification or adjustment of an order.
- (3) DCS identifies any fees or costs deducted from support payments when forwarding payments to the IJ in accordance with RCW 74.20.040 and WAC 388-14A-2200.
- (4) DCS stops its income withholding order or notice and closes the intergovernmental IV-D case within ten working days of receipt of instructions for case closure from the IJ,

unless DCS and the IJ reach an alternative agreement on how to proceed; and

(5) DCS notifies the IJ when a case is closed pursuant to WAC 388-14A-2083 and 388-14A-2090.

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

WAC 388-14A-8300 Who pays for genetic testing when paternity is an issue? (1) As provided in WAC 388-14A-3120(14), the noncustodial parent (NCP) and/or the mother of the child may request genetic testing, also called paternity tests, after the service of a notice and finding of parental responsibility.

(2) After receiving a request for paternity tests, the division of child support (DCS) must:

(a) Arrange and pay for the genetic testing, except as provided in subsection (6) of this section, with a laboratory under contract with the department; and

(b) Notify the NCP and the mother of the time and place to appear to give blood samples.

(3) After DCS receives the test results, DCS must:

~~((a))~~ mail a notice of the test results to the:

~~((b))~~ (a) NCP's last known address by certified mail, return receipt requested; and

~~((c))~~ (b) Mother's and/or custodial parent's last known address by first class mail.

~~((d))~~ Notify the NCP:

~~(i)~~ Of the costs of the tests;

~~(ii)~~ That an administrative order entered as a result of the notice and finding of parental responsibility will include the cost of the tests; and

~~(iii)~~ That DCS may take collection action to collect the genetic testing costs twenty days after the date the NCP receives notice in Washington, or within the time specified in WAC 388-14A-7200, of the test results if the NCP fails to:

~~(A)~~ Request either a hearing on the issue of reimbursement to DCS for genetic testing costs under WAC 388-14A-3120 or the initiation of a parentage action in superior court;

~~or~~

~~(B)~~ Negotiate an agreed settlement.

~~(iv)~~ If the notice was served in another state, DCS may take collection action according to WAC 388-14A-7200.)

(4) When the genetic tests do not exclude the NCP from being the father, DCS may require the NCP ~~((must))~~ to reimburse the department for the costs of the tests. If DCS seeks reimbursement from the NCP, DCS must notify the NCP:

(a) Of the costs of the tests;

(b) That an administrative order entered as a result of the notice and finding of parental responsibility will include the cost of the tests; and

(c) That DCS may take collection action to collect the genetic testing costs twenty days after the date the NCP receives notice in Washington, or within the time specified in WAC 388-14A-7200, of the test results if the NCP fails to:

(i) Request either a hearing on the issue of reimbursement to DCS for genetic testing costs under WAC 388-14A-3120 or the initiation of a parentage action in superior court;

~~or~~

(ii) Negotiate an agreed settlement; and

(d) That if the notice and finding of parental responsibility was served in another state, DCS may take collection action according to WAC 388-14A-7200.

(5) When the paternity tests exclude the NCP from being the father, DCS must:

(a) File a copy of the results with the state center for health statistics;

(b) Withdraw the notice and finding of parental responsibility; and

(c) Request the dismissal of any pending action based on the notice and finding of parental responsibility.

(6) RCW 74.20A.056 does not require DCS to arrange or pay for genetic testing when:

(a) Such tests were previously conducted; or

(b) A court order establishing paternity has been entered.

(7) In an intergovernmental case where DCS is the responding jurisdiction, DCS pays the costs of genetic testing for the initiating jurisdiction and may seek reimbursement from the NCP as provided in this section.

**WSR 12-21-136
PROPOSED RULES
OFFICE OF**

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-17—Filed October 24, 2012, 10:35 a.m.]

Supplemental Notice to WSR 12-19-101.

Preproposal statement of inquiry was filed as WSR 12-12-064.

Title of Rule and Other Identifying Information: Essential health benefits supplementation, scope and limitation requirements, and filing requirements.

Hearing Location(s): Training Room, T-120, 5000 Capitol Way South, Tumwater, WA, on December 14, 2012, at 10:00 a.m.

Date of Intended Adoption: December 17, 2012.

Submit Written Comments to: Meg L. Jones, P.O. Box 40258, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by December 13, 2012.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by December 10, 2012, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will establish new sections in Subchapter C of chapter 284-43 WAC (health benefits), explaining the requirements associated with carrier inclusion of the essential health benefits package in nongrandfathered individual and small group plans for plans with coverage beginning January 1, 2014.

Reasons Supporting Proposal: RCW 48.43.715 directs the commissioner to designate by rule the small group plan with the largest enrollment as the benchmark plan for purposes of defining the essential health benefits package for nongrandfathered individual and small group health benefit plans issued on or after January 1, 2014. The same legislation requires supplementation, and adjustment or establishment of scope and limitation requirements by the commissioner in order to ensure meaningful benefits and prevent bias

based on health selection. Carriers require specific guidance in order to prepare plan filings for the commissioner's review prior to health benefit exchange deadlines, and to ensure time to satisfy plan replacement requirements.

Statutory Authority for Adoption: RCW 48.02.060, 48.21.241, 48.21.320, 48.43.715, 48.44.460, 48.44.341, 48.46.291, 48.46.530.

Statute Being Implemented: RCW 48.43.715.

Rule is necessary because of federal law, P.L. 111-148, §1302.

Name of Proponent: Office of the insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg Jones, P.O. Box 40258, Olympia, WA 98504, (360) 725-7170; Implementation: Beth Berendt, P.O. Box 40258, Olympia, WA 98504, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40258, Olympia, WA 98504, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities that must comply with the proposed rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Meg Jones, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-7170, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

October 24, 2012

Mike Kreidler

Insurance Commissioner

NEW SECTION

WAC 284-43-849 Purpose and scope. For plan years beginning on or after January 1, 2014, each nongrandfathered health benefit plan offered, issued, amended or renewed to small employers or individuals, both inside and outside the Washington health benefit exchange, must provide coverage for a package of essential health benefits. WAC 284-43-849 through 284-43-885 implements the requirements of RCW 48.43.715, establishing a benchmark base plan and the essential health benefit package required in Washington State for nongrandfathered individual and small group health benefit plans.

(1) The commissioner will implement this subchapter to the extent that federal law or policy does not require the state to defray the costs of benefits included within the definition of essential health benefits.

(2) This subchapter does not apply to a health benefit plan that provides excepted benefits as described in Section 2722 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-21), or a health benefit plan that qualifies as a grandfathered health plan as defined in RCW 48.43.005, unless a plan is providing an essential health benefit for pediatric oral services within the exchange, or as a subcontractor to a health benefit plan.

(3) This subchapter does not require provider reimbursement at the same levels negotiated by the benchmark base plan's carrier for their plan.

(4) This subchapter does not require a plan to exclude the services or treatments from coverage that are excluded in the benchmark base plan. The benchmark base plan's exclusions are used to inform the calculation of the actuarial value of the benchmark essential health benefits package.

(5) This subchapter does not establish requirements regarding the choice of specific types of venues for delivery of outpatient treatment, services or supplies, nor the choice of specific approaches to therapy or treatment.

NEW SECTION

WAC 284-43-852 Definitions. The following definitions apply to this subchapter unless the context indicates otherwise.

"Benchmark base plan" means the small group plan with the largest enrollment, as designated in WAC 284-43-865(1).

"Health benefits" unless otherwise defined pursuant to federal rules, regulations or guidance issued pursuant to Section 1302(b) of PPACA, means health care items or services for injury, disease, or a health condition, including a behavioral health condition. Cost sharing requirements are not included in the definition of health benefits for purposes of this subchapter.

"Individual plan" means any nongrandfathered health benefit plan offered, issued, amended or renewed by an admitted carrier in the state of Washington for the individual health benefit plan market, unless the certificate of coverage is issued to an individual pursuant to or issued through an organization meeting the definition established in 45 C.F.R. 144.103, and sections 3(5) and 3(40) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

"Mandated benefit" means a health plan benefit for a specific type of service, device or medical equipment, or treatment for a specified condition or conditions that is required by either state or federal law.

"Meaningful health benefit" means the range of services or benefits within each of the ten essential health benefit categories identified in Section 1302 of PPACA, that are medically necessary to ensure enrollees covered access to clinically effective services, including services critical to the needs of those with chronic disease or those with special needs based on age or gender.

"Medical necessity determination process" means the process used by a health carrier to make a coverage determination about whether a medical item or service, which is a covered benefit, is medically necessary for an individual patient's circumstances.

"PPACA" means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules, regulations, or guidance issued thereunder.

"Scope and limitation requirements" means a requirement applicable to a benefit that limits the duration of a benefit, the number of times coverage is available for the benefit, or imposes a legally permitted eligibility limitation on a specific benefit.

"Small group plan" means any nongrandfathered health benefit plan offered, issued, amended or renewed by an

admitted carrier in the state of Washington for the small group health benefit plan market to a small group, as defined in RCW 48.43.005, unless the certificate of coverage is issued to a small group pursuant to a master contract held by or issued through an organization meeting the definition established in 45 C.F.R. 144.103, and sections 3(5) and 3(40) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

"Stand-alone dental plan" means a contract or agreement covering a set of benefits limited to oral care including, but not necessarily limited to, pediatric oral care.

NEW SECTION

WAC 284-43-860 Medical necessity determination

(1) A carrier may not apply its medical necessity determination process in a manner that results in a uniformly applied limitation on the scope, visit number or duration of a benefit that applies regardless of the specific treatment requirements of the patient, unless that uniform limitation is specifically explained in the certificate of coverage and the Summary of Coverage and Explanation of Benefits for the health plan.

(2) A carrier's medical necessity determination process must:

(a) Be clearly explained in the certificate of coverage, plan document, or contract for health benefit coverage;

(b) Conducted fairly, and with transparency, at a minimum when an enrollee or their representative appeals or seeks review of an adverse benefit determination;

(c) Include consideration of services that are a logical next step in reasonable care if they are appropriate for the patient, even if the service has not been the subject of clinical studies;

(d) Ensure that its process for interpretation of the medical purpose of interventions is broad enough to address any of the services encompassed in the ten essential health benefits categories of care;

(e) Comply with inclusion of the ten essential health benefits categories, and prohibitions against discrimination based on age, disability, and expected length of life; and

(f) Consider the provider's clinical judgment and recommendations regarding the medical purpose of the requested service, and the extent to which the service is likely to produce incremental health benefits for the enrollee.

(4) A carrier's medical necessity determination process may include, but is not limited to, evaluation of the effectiveness and benefit of a service for the individual patient based on scientific evidence considerations, up-to-date and consistent professional standards of care, convincing expert opinion and a comparison to alternative interventions, including no interventions. Cost effectiveness may be criteria for determining medical necessity if it is not limited to lowest price.

(5) Medical necessity criteria for medical/surgical benefits and mental health/substance use disorder benefits or for other essential health benefit categories must be furnished to an enrollee or provider within thirty days of a request to do so.

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.

NEW SECTION**WAC 284-43-875 Application of the definition and scope requirements for essential health benefit categories.**

(1) When calculating the actuarial value of a plan's essential health benefit package, each health benefit carrier must appropriately classify services covered by the plan consistent with WAC 284-43-877.

(2) A carrier must not apply visit limitations or limit the scope of the benefit category based on the type of provider delivering the service, other than requiring that the service must be within the provider's scope of license. This obligation does not require a carrier to contract with any willing provider, nor is a carrier restricted from establishing requirements for credentialing of and access to providers within its network.

NEW SECTION

WAC 284-43-877 Essential Health Benefits Package Benchmark Parameters A carrier must classify its services to an essential health benefits category consistent with this section for purposes of determining actuarial value and the scope of coverage.

(1) When the commissioner determines that a health benefit plan's "ambulatory patient services" category covers medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury, and which are not included in a more specifically defined essential health benefits category, in a substantially equivalent manner to the benchmark base plan, it provides a meaningful benefit in this category.

(a) The benchmark base plan specifically excludes the following services that would otherwise be included in this category:

- (i) Infertility treatment and reversal of voluntary sterilization;
- (ii) Routine foot care;
- (iii) Dental services provided to prevent, diagnose or treat diseases or conditions of the teeth and adjacent supporting soft tissues, including treatment that restores the function of teeth are excluded;
- (iv) Private duty nursing;
- (v) Non-skilled care and help with activities of daily living;
- (vi) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them, other than for cochlear implants, which are covered, and for hearing screening tests required under the preventive services category;
- (vii) Obesity or weight reduction or control other than covered nutritional counseling.

(b) The benchmark base plan's limitation on nutritional counseling to three visits per lifetime is an unreasonable restriction on patient treatment. A carrier may establish a reasonable visit limitation requirement for nutritional coun-

seling for medical conditions when supported by evidence based medical criteria.

(c) The benchmark base plan's visit limitations on services in this category include:

- (i) Ten spinal manipulation services without referral;
- (ii) Twelve acupuncture services per year without referral;
- (iii) One vision examination per calendar year, with one hundred fifty dollars per year for hardware, including frames, contacts, lenses, and tints;
- (iv) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime. Where respite services are delivered on an inpatient basis in a hospital or skilled nursing facility, the benefit may be classified to the hospital category;
- (v) One hundred thirty visits per year for home health care.

(d) Services specifically classified under this category that the benchmark base plan covers include, but are not limited to:

- (i) Home and out-patient dialysis services;
 - (ii) Hospice and home health care;
 - (iii) Provider office visits and treatments;
 - (iv) Urgent care center visits.
- (e) State mandates classified to this category are:
- (i) Chiropractic care (RCW 48.20.412, 48.21.142 and 48.44.310,);
 - (ii) TMJ disorder treatment (RCW 48.21.320; 48.44.-460, and 48.46.530);
 - (iii) Home health care and hospice services delivered in the home (RCW 48.21.220 and 48.44.320)'
 - (iv) Diabetes-related care, exclusive of those supplies or prescribed drugs, medications and therapies covered under other categories (RCW 48.20.391; 48.21.143; 48.44.315; 48.46.272).

(2) When the commissioner determines that a health benefit plan's "emergency medical services" category covers care and services related to an emergency medical condition in a manner substantially equivalent to the benchmark base plan, the plan provides a meaningful benefit for this category.

- (a) Benefits classified under this category include:
- (i) Transportation to an emergency room, and treatment provided as part of the ambulance service;
 - (ii) Emergency room based services and treatment.
- (b) State mandates classified under this category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) When the commissioner determines that a health benefit plan's "hospitalization" category covers medically necessary medical services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis, in a manner substantially equivalent to the benchmark base plan, the plan provides a meaningful benefit for this category.

(a) The benchmark base plan specifically excludes the following services that would otherwise be included in this category:

- (i) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a

physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(ii) Obesity surgery and supplies,
 (iii) Orthognathic surgery and supplies unless due to Temporomandibular joint disorder or injury, sleep apnea or congenital anomaly'

(iv) Sexual reassignment treatment and surgery;
 (v) Reversal of sterilizations;
 (vi) Surgical procedures to correct refractive errors/astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(b) The benchmark base plan's visit limitations on services in this category are:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Transplant services delivered prior to the end of a six month waiting period that is inclusive of prior creditable coverage. Beginning January 1, 2014, the waiting period may be no longer than ninety days.

(d) Covered services specifically classified under this category that the benchmark base plan covers include:

(i) Transplant services for donors and recipients, including the transplant facility fees;

(ii) Dialysis services delivered in a hospital;
 (iii) Artificial organ transplants based on medical guidelines;

(iv) Hospital visits, and provider services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(v) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility.

(e) State mandates covered under this category include:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280.);

(iii) Coverage for Temporomandibular joint disorder (RCW 48.21.320; 48.44.460, 48.46.530).

(4) When the commissioner determines that a health benefit plan's "maternity and newborn" category covers medically necessary care and services delivered to women during pregnancy, and in relation to delivery and recovery from delivery, and to newborn children, in a manner substantially equivalent to the benchmark base plan, the plan provides a meaningful benefit for this category.

(a) The benchmark base plan's visit limitations on services in this category include home birth by a midwife or nurse midwife is covered only for low risk pregnancy.

(b) Services specifically classified under this category that the benchmark base plan covers include:

(i) In utero treatment for the fetus;
 (ii) Delivery in a hospital or birthing center, including facility fees;

(iii) Professional and nursery services for newborns;
 (iv) Infertility diagnosis;
 (v) Prenatal and postnatal care and services, including screening; and

(vi) Termination of pregnancy.

(c) State mandates classified under this category include:

(i) Women's health care services including maternity services performed by a midwife, M.D., D.O., or ARNP (RCW 48.42.100; 48.43.115);

(ii) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(iii) Newborn coverage that is not less than the coverage for the mother, for no less than three weeks (RCW 48.43.-115);

(iv) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375.).

(d) The commissioner finds that the exclusion of maternity coverage for dependent daughters is an unreasonable restriction on patient treatment, and violates the women's wellness coverage requirements in PPACA. The limitation is not included as part of the benchmark base plan.

(f) The commissioner finds that the limitation on coverage for newborns delivered of dependent daughters, covering the newborn for seventy-two hours, is an unreasonable restriction on patient treatment, and is discriminatory. The limitation is not included as part of the benchmark base plan.

(5) When the commissioner determines that a health benefit plan's "mental health and substance use disorder services, including behavioral health treatment" category covers medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders, including behavioral health treatment for those conditions, in a manner substantially equivalent to the benchmark base plan, the plan provides a meaningful benefit for this category.

(a) The benchmark base plan specifically excludes the following services that would otherwise be included in this category:

(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;

(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the DSM-IV, or for "V code" diagnoses in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders, except for medically necessary services for parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or younger, and bereavement for children five years of age or younger.

(b) The benchmark base plan's specific limitations on services in this category include:

(i) A limit of four employee assistance program counseling sessions;

(ii) Court ordered treatment only when medically necessary.

(c) Services specifically classified under this category that the benchmark base plan covers include:

(i) Inpatient, residential, and outpatient mental health treatment;

- (ii) Chemical dependency detoxification;
- (iii) Behavioral treatment;
- (iv) Prescription medication prescribed during an inpatient and residential course of treatment; and
- (v) Acupuncture services for treatment of chemical dependency, without visit limitation.

(d) State mandates classified under this category include:

- (i) Mental health parity (RCW 48.20.580, 48.21.241; 48.44.341, and 48.46.285);

- (ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355.);

- (iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242; 48.44.342; 48.46.292).

(e) For purposes of this section, the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26).

(6) When the commissioner determines that a health benefit plan's "prescription drug services" category covers medically necessary prescribed drugs, medication and drug therapies, in a manner substantially equivalent to the benchmark base plan, the plan provides a meaningful benefit for this category.

(a) The benchmark base plan's specifically excludes weight loss drugs under this benefit.

(b) The benchmark base plan's exclusion of coverage for medication prescribed as part of a clinical trial, that is not the subject of the trial, is an impermissible exclusion of coverage under state and federal law.

(c) The benchmark base plan applies the following limitations to coverage:

- (i) Prescriptions for self-administrable injectible medication are limited to thirty-day supplies at a time;

- (ii) Teaching doses of self-administrable injectible medications are limited to three doses per medication per lifetime.

(e) Services specifically classified under this category that the benchmark base plan covers include:

- (i) Those classes of drugs, and the specific drugs in the drug formulary;

- (ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category;

- (iii) All FDA approved contraceptive methods, sterilization procedures for all women with reproductive capacity.

(f) A carrier's formulary is part of the prescription drug benefit category, and must be substantially equal to the benchmark base plan formulary, both as to therapeutic class and included drugs in the class. The benchmark formulary includes the following therapeutic classes: Anti-infectives, Cardiovascular, Cholesterol Lowering, Diabetes, Ear/Nose/Throat, Gastrointestinal, Hormones, Mental Health, Neurological, Ophthalmic, Pain and Inflammatory Disease, Respiratory, Skin, Women's Health. A carrier must file its formulary with a representative product identifier code in each therapeutic

class, when filing its rates and forms with the commissioner. Acceptable product identifier codes include Generic Sequence Number (GSN), Generic Code Number (GCN), Generic Product Identifier (GPI), or National Drug Code (NDC).

(g) State mandates classified under this category include:

- (i) Medical foods to treat inborn errors of metabolism, including PKU (RCW 48.44.440, 48.46.510, 48.20.520, and 48.21.300);

- (ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143);

- (iii) Orally administered anticancer medication parity requirements (RCW 48.20.389; 48.21.223; 48.44.323; 48.46.274);

- (iv) Mental health prescription drugs (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241).

(7) When the commissioner determines that a health benefit plan's "rehabilitative and habilitative services" category covers the following, the plan provides a meaningful benefit in this category:

(a) Medically necessary rehabilitative services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled, in a manner substantially equivalent to the benchmark base plan; and

(b) Habilitative services that include the range of medically necessary health care services and health care devices designed to assist an individual in partially or fully developing, learning and retaining developed or learned age appropriate skills and functioning, within the individual's environment or to compensate for a person's progressive physical, cognitive and emotional illness and that:

- (i) Are provided in a manner consistent with RCW 48.43.045;

- (ii) Take into account the unique needs of the individual;

- (iii) Target measurable, specific treatment goals appropriate for the person's age, and physical and mental condition; and

- (iv) Are consistent with the carrier's utilization review guidelines and practice guidelines recognized by the medical community as efficacious, and do not necessarily require a return to a prior level of function, if the scope of the services complies with (g) of this subsection.

A carrier may limit the definition of health care devices under the habilitative services category to those that require Food and Drug Administration (FDA) approval, and a prescription to dispense the device.

(c) The benchmark base plan's specific limitations on services in this category include:

- (i) Hearing aid devices are limited to cochlear implants;

- (ii) Inpatient rehabilitation facility and professional services delivered in those facilities are limited to thirty days per year;

- (iii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per year, on a combined basis, for rehabilitative purposes.

- (d) The benchmark base plan specifically classifies orthotics used to support, align or correct deformities or to improve the function of moving parts under this category.

(e) Services that would otherwise be classified under this category but the benchmark base plan specifically excludes are:

- (i) Off the shelf shoe inserts and orthopedic shoes;
- (ii) Exercise equipment for medically necessary conditions;
- (iii) Durable medical equipment that serves solely as a comfort or convenience item.

(f) State mandates classified under this category include:

- (i) State sales tax for durable medical equipment;
- (ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143);

(g) The scope of habilitative services must include, but is not limited to, the following requirements:

(i) The services and devices must be covered on not less than a parity basis to rehabilitative benefits. Habilitative services must not be limited to speech, physical and occupational therapy if medical necessity requires other types of habilitative services and devices that are consistent with the definition in (b) of this subsection;

(ii) Habilitative services and devices delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements or other habilitative services delivered in an educational setting may be excluded from coverage;

(iii) Habilitative services must be covered both as to type of service and amount of the service. The phrase "the amount" refers to the number of services, subject to a carrier's medical necessity and utilization review determinations. A carrier may not exclude coverage for services delivered outside an educational setting on the basis that the enrollee is receiving some of the prescribed number of services in an educational setting;

(iv) Habilitative services do not necessarily require a return to a prior level of function.

(h) The scope of rehabilitative services may not be applied in a manner that results in a limitation of coverage that is inconsistent with evidence based medical guidelines for therapies specific to disease recovery, other than on the basis of medical necessity. A health benefit plan must classify therapies specific to disease recovery to the ambulatory patient services category or, when delivered in an inpatient setting, the hospitalization category. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy.

(8) When the commissioner determines that a health benefit plan's "laboratory services" category covers medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X ray, MRI, CAT scan and PET scans, in a manner substantially equivalent to the benchmark base plan, the plan provides a meaningful benefit for this category.

(9) When the commissioner determines that a health benefit plan's "preventive and wellness services, including chronic disease management" category covers services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic, services that assist in the multidisciplinary management and treatment of chronic diseases, services of particular preven-

tive or early identification of disease or illness of value to specific populations, such as women, children and seniors, in a manner substantially equivalent to the benchmark base plan, the plan provides a meaningful benefit for this category.

(a) The benchmark base plan specifically covers preventive services recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices, the U.S. Preventive Services Task Force A and B guidelines for prevention and chronic care, the U.S. Health Resources and Services Administration Bright Futures guidelines as set forth by the American Academy of Pediatricians.

(b) State mandates classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275);

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.227, 48.44.327, and 48.46.277).

(10) When the commissioner determines that a health benefit plan's "pediatric services" category covers persons who would otherwise be eligible for child only coverage under state law, in a manner substantially equivalent to the benchmark base plan in each of the essential health benefits categories, includes the pediatric vision benefits set forth in the Federal Employees Vision Plan with the largest enrollment and published by the U.S. Department of Health and Human Services at www.cciioo.cms.gov on July 2, 2012, and includes the pediatric oral benefits found in the Washington state CHIP plan, in a manner substantially equivalent to these supplemental benchmark plans, the plan provides a meaningful benefit for this category.

(a) The vision services included in the "pediatric" category are:

(i) Routine vision screening for children, including dilation and with refraction every calendar year, including dilation;

(ii) One pair of prescription lenses or contacts every calendar year, including polycarbonate lenses and scratch resistant coating;

(iii) One pair of frames every calendar year;

(iv) Low vision optical devices including low vision services, and an aid allowance with follow-up care when preauthorized.

(b) The pediatric vision benefits specifically exclude:

(i) Visual therapy;

(ii) Two pairs of glasses may not be ordered in lieu of bifocals.

(c) The oral benefits included in the "pediatric" category are:

(i) Diagnostic services;

(ii) Preventive care;

(iii) Restorative care;

(iv) Oral surgery and reconstruction to the extent not covered under the hospitalization benefit;

(v) Endodontic treatment;

(vi) Periodontics;

(vii) Crown and fixed bridge;

(viii) Removable prosthetics;

(ix) Medically necessary orthodontia.

(d) The pediatric oral benefits include the following scope and limitation requirements:

(i) Diagnostic exams once every six months, beginning before one year of age;

(ii) Bitewing X ray once a year;

(iii) Panoramic X rays once every three years;

(iv) Prophylaxis every six months beginning at age six months;

(v) Fluoride three times in a twelve month period for ages six and under; two times in a twelve month period for ages seven and older; three times in a twelve month period during orthodontic treatment; sealant once every three years for occlusal surfaces only; oral hygiene instruction two times in twelve months for ages eight and under if not billed on the same day as a prophylaxis treatment;

(vi) Every two years for the same restoration (fillings);

(vii) Frenulectomy or frenuloplasty covered for ages six and under without prior authorization;

(viii) Root canals on baby primary posterior teeth only;

(ix) Root canals on permanent anterior, bicuspid and molar teeth, excluding teeth 1, 16, 17, and 32;

(x) Periodontal scaling and root planning once per quadrant in a two year period for ages thirteen and older, with prior authorization;

(xi) Periodontal maintenance once per quadrant in a twelve month period for ages thirteen and older, with prior authorization;

(xii) Stainless steel crowns for primary anterior teeth once every three years; if age thirteen and older with prior authorization;

(xiii) Stainless steel crowns for permanent posterior teeth once every three years;

(xiv) Metal/porcelain crowns and porcelain crowns on anterior teeth only, with prior authorization;

(xv) Space maintainers for missing primary molars A, B, I, J, K, L, S, and T;

(xvi) One resin based partial denture, replaced once within a three year period;

(xvii) One complete denture upper and lower, and one replacement denture per lifetime after at least five years from the seat date;

(xviii) Rebasings and relining of complete or partial dentures once in a three year period, if performed at least six months from the seating date.

(e) The pediatric oral benefit specifically excludes implants.

(f) State mandates classified under this category include:

(i) Neurodevelopmental therapy to age six, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310);

(ii) Congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, 48.46.250, and 48.21.155).

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

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NEW SECTION

WAC 284-43-880 Plan design parameters. (1) A non-grandfathered individual or small group health benefit plan issued, renewed, amended, or offered on or after January 1, 2014, must cover the ten essential health benefits categories as set forth in the benchmark base plan, as supplemented by the commissioner, at least to the extent that the benefits and services included are medically necessary, and so that the benefits are substantially equal to the designated benchmark plan, as supplemented.

For the purposes of this section "substantially equal" means that:

(a) The scope and level of benefits offered within each essential health benefit category is meaningful;

(b) The aggregate value of the benefits across all essential health benefit categories is not less than the aggregate value of the benchmark base plan as supplemented by the commissioner; and

(c) Within each essential health benefit category, the actuarial value of the category is not less than the actuarial value of the category for the benchmark base plan as supplemented by the commissioner.

(2) A carrier may not alter its health benefit plan design by transferring a service from the category assigned to it by the commissioner in WAC 284-43-877 if that transfer results in the elimination of a parity requirement.

(3) Nothing precludes a health carrier from including coverage for benefits in a health benefit plan that are in addition to the benchmark base plan's essential health benefit package, as supplemented by the commissioner. A carrier must identify in its rate filing those services substituted within a category as part of the essential health benefits package, if the carrier includes the service in calculating actuarial value of the essential health benefits package.

(4) To the extent that the benchmark base plan contains benefit limitations that conflict with requirements of PPACA, the benefit limitations must be amended to comply with PPACA's requirements.

(5) A health benefit plan may not be offered if the commissioner determines that:

(a) It creates a risk of biased selection based on health status;

(b) The benefits within an essential health benefit category are not a meaningful benefit; or

(c) The benefit violates the antidiscrimination requirements of PPACA, section 511 of Public Law 110-343 (the federal Mental Health Parity and Addiction Equity Act of 2008), as amended, or Washington state law.

(6) Pediatric oral benefits must be included in a health benefit plan either as an embedded set of services, offered through a rider or as a contracted service. If a health plan is subsequently certified by the health benefit exchange as a qualified health plan, this requirement is met for that benefit year for the certified plan if a stand-alone dental plan covering pediatric oral services as set forth in the benchmark base plan, as supplemented, is offered in the health benefit exchange for that benefit year.

(7) A carrier must not impose annual or lifetime dollar limits on an essential health benefit.

NEW SECTION

WAC 284-43-882 Plan cost sharing and benefit substitution of limitations (1) At the time a health benefit plan form is filed with the commissioner for approval, if a carrier elects to adjust specific services within any of the essential health benefit categories, or a quantitative limit for a service, a carrier must submit with its filing an actuarial opinion certifying the equivalence of the value of the plan's essential health benefits in the category, and overall, to the benchmark base plan as supplemented.

(2) A health benefit plan must not apply cost-sharing requirements to Native Americans purchasing a health benefit plan through the Exchange, whose incomes are at or below 300% of federal poverty level.

(3) A small group health benefit plan that includes the essential health benefits package may not impose annual cost-sharing or deductibles that exceed the maximum annual amounts that apply to high deductible plans linked to health savings accounts, as set forth in the most recent version of IRS Publication 969, pursuant to section 106 (c)(2) of the Internal Revenue Code of 1986, and section 1302 (c)(2) of PPACA.

(4) A carrier may use reasonable medical management techniques to control costs, including promoting the use of appropriate, high value preventive services, providers and settings. A carrier's policies must accommodate enrollees for whom it would be medically inappropriate to have the service provided in one setting versus another, as determined by the attending provider, and permit waiver of an otherwise applicable copayment for the service that is tied to one setting but not the preferred high-value setting.

(5) A carrier may not require cost-sharing for preventive services delivered by network providers, specifically related to those with an A or B rating in the most recent recommendations of the United States Preventive Services Task Force, women's preventive healthcare services recommended by the U.S. Health Resources and Services Administration (HRSA) and HRSA Bright Futures guideline designated pediatric services.

NEW SECTION

WAC 284-43-885 Representations regarding minimum essential coverage. A health carrier must not indicate or imply that a health benefit plan covers the essential health benefits unless the plan contract covers essential health benefits in compliance with this subchapter. This requirement applies to any health benefit plan offered inside or outside the Washington health benefit exchange.

WSR 12-22-044
PROPOSED RULES
GAMBLING COMMISSION
 [Filed November 2, 2012, 3:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-041.

Title of Rule and Other Identifying Information: WAC 230-03-065 Spouses must also be qualified and 230-03-045 Defining substantial interest holder.

Hearing Location(s): Comfort Inn Conference Center (tentative), 1620 74th Avenue S.W., Tumwater, WA 98501, on January 10 or 11, 2013, at 9:30 a.m. or 1:30 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: January 10 or 11, 2013. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by December 24, 2012.

Assistance for Persons with Disabilities: Contact Gail Grate by January 1, 2013, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change would no longer require spouses of officers of charitable or nonprofit organizations (C/NP), or board members of publicly-traded entities to undergo background checks.

Staff has recognized that spouses of board members of publicly-traded licensees and C/NP officers pose little to no regulatory risk. Spouses of C/NP officers have no actual or potential influence over the decision making of the organization. We are not aware of other jurisdictions in the United States that require spouses of board members or C/NP officers to undergo background checks.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070(7).

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the proposed rule change does not impose additional costs on businesses.

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

November 2, 2012

Susan Newer

Rules Coordinator

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-03-045 Defining substantial interest holder. (1) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any organization, association, or other business entity.

(2) Evidence of substantial interest may include, but is not limited to:

(a) Directly or indirectly owning, operating, managing, or controlling an entity or any part of an entity; or

(b) Directly or indirectly profiting from an entity or assuming liability for debts or expenditures of the entity; or

(c) Being an officer or director or managing member of an entity; or

(d) Owning ten percent or more of any class of stock in a privately or closely held corporation; or

(e) Owning five percent or more of any class of stock in a publicly traded corporation; or

(f) Owning ten percent or more of the membership shares/units in a privately or closely held limited liability company; or

(g) Owning five percent or more of the membership shares/units in a publicly traded limited liability company; or

(h) Providing ten percent or more of cash, goods, or services for the start up of operations or the continuing operation of the business during any calendar year or fiscal year. To calculate ten percent of cash, goods, or services, take the operational expenses of the business over the past calendar or fiscal year, less depreciation and amortization expenses, and multiply that number by ten percent; or

(i) Receiving, directly or indirectly, a salary, commission, royalties, or other form of compensation based on the gambling receipts.

(3) Spouses of officers of charitable or nonprofit organizations and spouses of board members of publicly traded entities are not considered substantial interest holders.

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-03-065 Spouses must also be qualified. (1) Applicants' spouses must also meet the qualifications to hold a gambling license when married persons who maintain a marital community apply for or hold a license to operate gambling activities. This includes, but is not limited to, owners and substantial interest holders of commercial gambling establishments and officers of charitable or nonprofit organizations.

(2) If you are a licensed employee of a gambling operation, officer of a charitable or nonprofit organization, or a board member of a publicly traded entity, your spouse does not need to meet the licensing qualifications.

WSR 12-22-049

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed November 5, 2012, 12:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-034.

Title of Rule and Other Identifying Information: Amend WAC 390-05-400 Changes in dollar amounts, to insert and adjust contribution limits for school board candidates.

Hearing Location(s): 711 Capitol Way, Room 206, Olympia, WA, on January 24, 2013, at 9:30 a.m.

Date of Intended Adoption: January 24, 2013.

Submit Written Comments to: Lori Anderson, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504-0908, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by January 22, 2013.

Assistance for Persons with Disabilities: Contact Jana Greer by January 23, 2013, (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 202, Laws of 2012, effective June 7, 2012, amended RCW 42.1A.405 [42.17A.405] to enact \$800 per election contribution limits for school board candidates. Prior to the passage of chapter 202, Laws of 2012, the commission had adjusted the \$800 contribution limit to \$900, effective January 13, 2012. Adjusting the limit for school board candidates will eliminate candidates' confusion that would result from having an "old" \$800 limit for school board candidates and a "new" \$900 limit for candidates for other offices.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.125.

Statute Being Implemented: RCW 42.17A.405.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: RCW 42.17A.125 requires the commission, at the beginning of each even-numbered calendar year, to adjust dollar amounts in RCW 42.17A.405 and 42.17A.410 based on changes in economic conditions. The commission believes the legislature's failure to recognize the 2012 adjustment when expanding contribution limits to school board candidates in chapter 202, Laws of 2012, was an oversight that amending WAC 390-05-400 will correct.

Name of Proponent: PDC, governmental.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses. The PDC is not subject to the requirement to prepare a school district fiscal impact statement found in RCW 28A.305.135.

November 5, 2012

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 12-10-041, filed 4/27/12, effective 5/28/12)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the requirement in RCW 42.17A.125 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW 42.17A.410 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	2012 Revision
.005	Definition of "Independent Expenditure"	\$800	\$900
.445(3)	Reimbursement of candidate for loan to own campaign	\$4,700	\$5,000
.630(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$16,000 \$800	\$18,000 \$900
.405(2)	Contribution Limits— Candidates for state leg. office Candidates for county office Candidates for other state office Candidates for special purpose districts Candidates for city council office Candidates for mayoral office <u>Candidates for school board office</u>	\$800 \$800 \$1,600 \$1,600 \$800 \$800 <u>\$800</u>	\$900 \$900 \$1,800 \$1,800 \$900 \$900 <u>\$900</u>
.405(3)	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	\$800 \$1,600	\$900 \$1,800
.405(4)	Contribution Limits— Contributions made by political parties and caucus committees State parties and caucus committees County and leg. district parties Limit for all county and leg. district parties to a candidate	.80 per voter .40 per voter .40 per voter	.90 per registered voter .45 per registered voter .45 per registered voter
.405(5)	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall State parties and caucuses County and leg. district parties Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.80 per voter .40 per voter .40 per voter	.90 per registered voter .45 per registered voter .45 per registered voter
.405(7)	Limits on contributions to political parties and caucus committees To caucus committee To political party	\$800 \$4,000	\$900 \$4,500
.410(1)	Candidates for judicial office	\$1,600	\$1,800

Code Section	Subject Matter	Amount Enacted or Last Revised	2012 Revision
.475	Contribution must be made by written instrument	\$80	\$90

WSR 12-22-055
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed November 6, 2012, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-18-072.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and record-keeping, rates and rating system for Washington workers' compensation insurance and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501-5414, on January 22, 2013, at 10:00 a.m.

Date of Intended Adoption: April 1, 2013.

Submit Written Comments to: Richard Bredeson, P.O. Box 44148, Olympia, WA 98504-4148, e-mail Richard.Bredeson@Lni.wa.gov, fax (360) 902-4985, by 5 p.m. on January 23, 2013.

Assistance for Persons with Disabilities: Contact office of information assistance by January 17, 2013, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A department study identified the need for a single classification that appropriately rates product demonstrator services according to the industry's level of hazard. The proposed subclassification is a special exception available to product demonstrator services, manufacturers, and wholesalers if hiring product demonstrators with no other exposure to their business' operations. At today's rates, the base rate for product demonstrators would be about eleven cents per hour higher for firms currently reporting product demonstrators in classification 6303 and twenty-five cents per hour lower for any firm currently reporting product demonstrators in classification 7106.

Reasons Supporting Proposal: This proposal will ensure consistent treatment and an appropriate rate for all product demonstration services and other types of businesses employing product demonstrators.

Statutory Authority for Adoption: RCW 51.04.020, 51.16.035, and 51.16.100.

Statute Being Implemented: RCW 51.16.035.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Bredeson, Tumwater, Washington, (360) 902-4985; Implementation: Les Hargrave, Tumwater, Washington,

(360) 902-4298; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.310 (4)(f) and do not change current coverage options for employers and workers.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any existing coverage options for employers or workers and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

November 6, 2012
 Judy Schurke
 Director

AMENDATORY SECTION (Amending WSR 09-16-110, filed 8/4/09, effective 10/1/09)

WAC 296-17-31018 Exception classifications. (1) What are exception classifications?

In *WAC 296-17-31012* we discussed our classification policy. We described the process used to classify risk and stated that we assign the basic classification or basic classifications that best describe the nature of your company's business. While this policy is modeled after the policy used by private insurance carriers and is geared to administrative ease for you, we recognize that there are some duties or operations where your employees do not share the same general workplace hazards that your other employees are exposed to. To provide for those operations that are outside the scope of a basic classification, we have created three types of exception classifications listed below:

- Standard exception classifications((:));
- Special exception classifications((:)); and
- General exclusion classifications.

(2) What are the standard exception classifications?

Standard exception classifications cover those employments that are administrative in nature and common to many industries. Employees covered by a standard exception classification cannot be exposed to any operative hazard of the business. If the language of the basic classification assigned to your business does not include these employments, you may be able to report them separately. You cannot divide the work hours of an employee between a standard exception classification and a basic classification unless it is permitted by another rule. If an employee works part of their time in a standard exception classification and part of their time in your basic classification, then all exposure (hours) must be reported in the highest rated basic classification applicable to

the work being performed. The standard exception classifications are:

- Classification 4904 (*WAC 296-17A-4904*) "clerical office employment." This classification includes clerical, administrative, and drafting employees.
- Sales personnel classifications 6301 (*WAC 296-17A-6301*), and 6303 (*WAC 296-17A-6303*) includes outside sales personnel and messengers.
- Classification 7101 (*WAC 296-17A-7101*) applies to corporate officers who have elected optional coverage. A corporate officer as used in these rules is a person who is an officer in the corporation, such as the president, who also serves on the corporation's board of directors and owns stock in the corporation.
- Classification 7100 (*WAC 296-17A-7100*) applies to members of a limited liability company who have elected optional coverage.

Clerical office employees are defined as employees whose duties are limited to: Answering telephones; handling correspondence; creating or maintaining financial, employment, personnel, or payroll records; composing informational material on a computer; creating or maintaining computer software; and technical drafting. Their work must be performed in a clerical office which is restricted to:

- A work area which is physically separated by walls, partitions, or other physical barriers, from all other work areas of the employer(;) and
- Where only clerical office work as described in this rule is performed.

A clerical office does not include any work area where inventory is located, where products are displayed for sale, or area where the customer brings products for payment. Clerical office employees can perform cashiering and telephone sales work if they do not provide any retail or wholesale customer service that involves handling, showing, demonstrating, or delivering any product sold by the employer. Clerical office employees can make bank deposits, pick up and deliver mail at the post office, or purchase office supplies, if their primary work duties are clerical office duties as defined in this rule.

Sales personnel are defined as employees whose duties are limited to: Soliciting new customers by telephone or in person; servicing existing customer accounts; showing, selling, or explaining products or services; completing correspondence; placing orders; performing public relations duties; and estimating. Although some of sales person's duties may be performed in a clerical office, most of their work is conducted away from the employer's physical business location or in showrooms. We refer to work that takes place away from the employer's premises as "*outside sales*." Sales personnel whose duties include customer service activities such as, but not limited to, the delivery of product, stocking shelves, handling inventory, or otherwise merchandising products sold to retail or wholesale customers are excluded from all standard exception classifications. Sales personnel with duties such as delivery and stocking of shelves are to be reported in the basic classification applicable to the business unless the basic classification assigned to the business requires another treatment.

Messengers are defined as employees whose duties are delivering interoffice mail, making deposits, and similar duties that are exclusively for the administration of the employer's business. Classification 6303 "messengers" does not include delivering mail or packages to the employer's customer or as a service to the public. If a messenger is engaged in delivering mail or packages as a service to the public they are to be assigned to the basic classification of the business or classification 1101 as applicable.

Corporate officers duties in classification 7101 must be limited to: Clerical duties; outside sales duties as described above; administrative duties such as hiring staff, attending meetings, negotiating contracts, and performing public relations work. To qualify for this classification, a corporate officer must:

- Be a shareholder in the corporation(;) and
- Be elected as a corporate officer and empowered in accordance with the articles of incorporation or bylaws of the corporation(;) and
- Serve on the corporation's board of directors(;) and
- Not have any exposure to any operative hazard of the business(;) and
- Not directly supervise employees who have any exposure to any operative hazard of the business.

Members of a limited liability company (LLC) duties in classification 7100 must be limited to: Clerical duties; outside sales duties as described above; administrative duties such as hiring staff, attending meetings, negotiating contracts, and performing public relations work. This includes only those members who have duties and authority similar to the exemption criteria of corporate officers in RCW 51.12.020.

Classification 6303 may apply to a corporate officer or member of a limited liability company whose duties are limited to outside sales activities as described in the sales personnel section of this rule. Under no circumstance is classification 4904 to be assigned to any corporate officer or member of a limited liability company. ~~(You cannot divide the work hours of an employee between a standard exception classification and a basic classification unless it is permitted by another rule. If an employee works part of their time in a standard exception classification and part of their time in your basic classification, then all exposure (hours) must be reported in the highest rated basic classification applicable to the work being performed.)~~

(3) What are the special exception classifications?

Special exception classifications represent operations found within an employer's business that are allowed to be reported separately when certain conditions are met. Assuming the conditions noted under each exception below have been met, the following classifications may be used even if your basic classification includes the phrases "all operations" or "all employees." These special exceptions are subject to a division of worker hours in connection with all other basic classifications unless specifically prohibited in an individual classification WAC rule.

Farms: Hand harvesting crops - Classification 4806 (*WAC 296-17A-4806*) will apply if the employee:

- Is hand harvesting crops such as nuts, berries, prunes, field flowers, or bulbs(;) and

- Is harvesting by picking from trees while standing on the ground or harvesting from the ground while sitting, kneeling, bending, or stooping.

Security guards - Classification 6601 (*WAC 296-17A-6601*) will apply if the security guard:

- Is an employee of an employer engaged in logging or construction((:));
- Is for the purpose of guarding the employer's logging or construction sites((:));
- Is employed at the site only during the hours the employer is not conducting any other operations at the site((:));
- Has no other duties during their work shift as a security guard.

If all of the above conditions are not met, the security guard is to be reported in the basic classification applicable to the construction or logging operation being conducted.

Janitors - Classification 6602 (*WAC 296-17A-6602*) will apply if:

- The janitorial/cleaning activities being performed are limited to the employer's clerical office((:));
- The clerical office meets the criteria described earlier in this rule((:)); and
- The employer's office employment is assigned to be reported in classification 4904.

Construction: Superintendent or project manager - Classification 4900 (*WAC 296-17A-4900*) will apply if the superintendent or project manager:

- Is an employee of a licensed contractor engaged in construction((:));
- Has no direct control over work crews((:));
- Performs no construction labor at the construction site or project location.

If all of the conditions are not met, the superintendent or project manager is to be reported in the basic classification applicable to the construction project.

Construction: Estimator - Classification 4911 (*WAC 296-17A-4911*) will apply if the estimator:

- Is the employee of a licensed contractor engaged in construction((:)); and
- Has no duties other than estimating during their work shift.

If these conditions are not met, the estimator is to be reported in the basic classification applicable to their employer's business or the construction project.

Permanent yard or shop operations - Classification 5206 (*WAC 296-17A-5206*) will apply if:

- The permanent yard or shop is maintained exclusively for the storage and maintenance of materials or equipment used in the business of logging, log hauling, construction, or trucking.

Log truck drivers - Classification 5003 (*WAC 296-17A-5003*) will apply if the log truck driver has no other duties during their work shift that are subject to the logging classification 5001 (*WAC 296-17A-5001*).

Retail product demonstrators - Classification 6406 (*WAC 296-17A-6406*) will apply if the product demonstrator:

- Has no other duties during the work shift, other than minor set up and preparation, demonstrating, or providing sample products free of charge to the public;
- Does not demonstrate equipment or machinery;
- Does no delivery, selling, stocking of shelves, or assembly requiring the use of power tools;
- Does not set up product displays that remain after the demonstration;
- Is employed by a manufacturer, wholesaler, or business specializing in providing product demonstrators and their services to others.

If all of these conditions are not met, product demonstrators are to be reported in the basic classifications applicable to their employers.

(4) What are the general exclusion classifications?

General exclusion classifications represent operations that are so exceptional or unusual that they are excluded from the scope of all basic classifications. If you have these operations, we will assign a separate classification to cover them. You must keep accurate records of the work hours your employees work in these classifications. If you do not keep accurate time records for each employee performing work covered by a general exclusion classification, we will assign the work hours in question to the highest rated classification applicable to those hours. The general exclusion classifications are:

- Aircraft operations: All operations of the flying crew((:));
- Racing operations: All operations of the drivers and pit crews((:));
- Diving operations: All operations of diving personnel and ship tenders who assist in diving operations((:));
- New construction or alterations of the business premises((:));
- Musicians and entertainers.

A division of work time is permitted between a standard exception classification and flight crew operations, racing operations, or diving operations. If you fail to keep original time records that clearly show the time spent in the office or in sales work, we will assign all work hours in question to the highest rated classification applicable to the work hours in question.

Example: Assume a corporate officer performs duties which are described in classification 7101. Occasionally, the officer flies a plane to attend a meeting. You would report the flying exposure (hours) of the corporate officer in classification 6803. The remainder of the corporate officer's time would continue to be reported in classification 7101.

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

WAC 296-17A-6303 Classification 6303.

6303-00 Outside sales personnel, N.O.C.; messengers

Applies to those employees whose job duties and work environment meet *all* the conditions of the general reporting rules covering outside sales personnel, and who are not covered by another classification (N.O.C.) assigned to the employer's account. Duties of outside sales personnel contemplated by this classification are limited to soliciting new

customers by telephone or in person, showing, selling, and explaining products or services in a showroom or other location, servicing existing accounts, completing correspondence, placing orders, performing public relations duties, and estimating. Duties of messengers are limited to delivering interoffice mail, making deposits, and similar duties that are exclusively for the administration of the employer's business.

This classification excludes:

- The delivery of products or merchandise or the stocking of shelves which is to be reported separately as applicable;
- The demonstration or delivery of machinery or equipment which are to be reported separately as applicable(;;);
- Establishments engaged as collection agencies or public relations agencies which are to be reported separately in classification 5301;
- Sales personnel engaged in home or door-to-door sales which are to be reported in classification 6309;
- Retail product demonstrators - Workers who show and explain specific products in a retail setting and who are to be reported as required by WAC 296-17-31018(3) and 296-17A-6406;
- Establishments engaged in providing inspection and valuations exclusively for insurance companies which are to be reported separately in classification 4903;
- Establishments engaged in process and legal messenger services which are to be reported separately in classification 6601.

Special note: When considering this classification care must be taken to look beyond titles of employees. Employees with occupational titles such as, but not limited to, collectors, counselors, consultants, or appraisers may or may not qualify for this classification. This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met.

6303-03 Insurance sales personnel and claims adjusters

Applies to insurance sales personnel and claims adjusters with outside duties. Duties of employees subject to this classification are limited to selling insurance policies at their place of business or at the client's home, or going to the scene of an accident or catastrophe to assess damage. Work may be performed within an office or away from the employer's premises.

Special note: Individuals performing duties as an agent, broker, or solicitor (and who hold a license as issued by the office of the insurance commissioner) are exempt from coverage as specified in RCW 51.12.020(11) and 48.17.010. To elect voluntary coverage these individuals must submit a completed optional coverage form to the department.

6303-21 Home health care services: Social workers and dietitians

Applies to social workers and dietitians employed by home health care service establishments who provide care for handicapped individuals. Duties of these employees include teaching physically or developmentally disabled individuals in their own home to manage daily living skills such as caring

for themselves, dressing, cooking, shopping, and going to the doctor. This classification also includes dietitians, sometimes called nutritionists, who usually are referred to patients by their physicians. The dietitian assesses the patient's current nutritional status, including current food intake, medical background, family history, currently prescribed medications, and social and psychological needs, then develops a food plan to meet the patient's needs. Employees subject to this classification do no cooking.

This classification excludes nursing and home health care services which are to be reported separately in classification 6110; therapy services which are to be reported separately in classification 6109; domestic servants who are to be reported separately in classification 6510; and chore workers who are to be reported separately in classification 6511.

Special note: This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met. *This classification is not to be assigned to any account that does not also have classification 6110 and/or 6511.*

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

WAC 296-17A-6406 Classification 6406.

This classification applies to specialty retail store operations engaged primarily in the sale of a wide variety of products ranging from collectibles such as stamps, coins, sports cards, and dolls to table top appliances such as portable televisions, blenders, mixers and toasters. This classification is comprised of subclassifications that cover a specific type of retail store operation. One of the subclassifications applies to the sale of products which are not covered by another classification. Although the products sold by establishments subject to this classification will vary by each subclassification, the overall operational activities are similar. Each business covered by this classification will generally employ cashiers and merchandise stockers, as well as other occupations of workers.

Special note: This classification excludes all repair operations unless it is specifically included in the classification, delivery service, outside installation work, and lunch counters and restaurants which are to be reported separately in the classification applicable to the work or service being performed.

Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6406-00 Retail stores, N.O.C.

Applies to establishments engaged in the retail sale of merchandise or services not covered by another classification (N.O.C.). Merchandise includes, but is not limited to, greeting cards, costume jewelry, scarves, tropical fish and birds and related fish or bird supplies, table top appliances such as mixers, blenders, microwave ovens, or table top satellite receiving units, copy or fax services and related specialty

items or services. This classification also applies to establishments that provide inventory services for other businesses.

This classification excludes pet stores that sell dogs or cats and establishments engaged in pet grooming services which are to be reported separately in classification 7308; pet food stores which are to be reported separately in classification 6403; and offset, cold press and similar printing operations which are to be reported separately in classification 4101.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-01 Stores: Camera or photography supply - Retail

Applies to establishments engaged in the retail sale of cameras and photography and dark room supplies such as, but not limited to, batteries, film, processing trays, chemicals, print paper, enlargers, and timers. It is common for these establishments to offer film developing services which may be either a one-hour service or an overnight process. Both types of film developing services are included in this classification when conducted in connection with a camera and photography supply store. This classification is distinguishable from classification 6506 in that establishments covered in classification 6506 are not engaged in the sale of cameras or photo developing equipment.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-03 News and magazine stands - Retail

Applies to establishments engaged in the retail sale of newspapers and magazines. Establishments subject to this classification may sell newspapers or magazines from various locations such as, but not limited to, stands at public markets, store operations in malls, or from a street corner.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-09 Arcades: Coin or token operated

Applies to establishments engaged in operating coin- or token-operated arcades. This classification covers attendants, change makers, and security personnel who monitor the game rooms and make change. Attendants may remove tokens and money from machines and may perform minor adjustments such as resetting a jarred machine.

This classification excludes the installation, removal or repair of machines which is to be reported separately in classification 0606.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-11 Stores: Office stationery and machinery - Retail

Applies to establishments engaged in the retail sale of office stationery, supplies, and/or machinery. For purposes of this classification "office stationery and supplies" includes, but is not limited to, paper, writing tablets, computer software, pens, pencils, markers, staples, staplers, scissors, paper clips, and binders. "Office machinery or business machinery" includes, but is not limited to, calculators, typewriters, vari-

ous types of copy machines, fax machines, and desk top and lap top computers.

This classification excludes service and repair of office/business machines which is to be reported separately in classification 4107 and establishments engaged in sale of office furniture which are to be reported separately in classification 6306.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-12 Stores: Fabric, yardage, yarn and needlework supplies - Retail

Applies to establishments engaged in the retail sale of fabric, yardage, yarn and needlework supplies. It is common for establishments subject to this classification to have a small inventory of noncommercial/industrial sewing machines and sergers for sale in addition to fabric, sewing notions, patterns, and related supplies. Fabric and yarn stores may also offer sewing and craft classes which are included in this classification when taught by employees of an employer subject to this classification. This classification is distinguishable from sewing machine stores in classification 6309 in that the principle products sold in classification 6406 are fabric and sewing notions while sewing machine stores are not engaged in the sale of fabric or yardage.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-14 Stores: Wind or string musical instruments - Retail

Applies to establishments engaged in the retail sale of musical instruments such as, but not limited to, drums, wind instruments, guitars, and banjos. This classification includes music lessons when provided by employees of an employer subject to this classification and includes minor adjustment services such as replacing a drum skin or a broken string on a guitar.

This classification excludes the repair of wind and string musical instruments which is to be reported separately in the applicable repair classification; establishments engaged in the repair of pianos which are to be reported separately in classification 2906; and establishments engaged in the sale of pianos and organs which are to be reported separately in classification 6306.

Special notes: Classification 6406 does not apply to any establishments that sell pianos or organs in addition to wind or string instruments. Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-16 Stores: Drug - Retail

Applies to establishments engaged in the retail sale of prescription and nonprescription drugs and/or nutritional supplements such as, but not limited to, vitamins, herbal compounds, and energy bars. Drug stores subject to this classification may also carry a variety of personal care and grooming products and may rent crutches, canes, wheel chairs, and walkers.

This classification excludes establishments engaged in the sale and/or rental of hospital beds, motorized wheel

chairs, and other patient appliances which are to be reported separately in classification 6306, and establishments engaged in the sale/rental and service (repair) of motorized mobility aids such as wheelchairs and 3-wheel scooters which are to be reported separately in classification 3309.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-17 Stores: Variety - Retail

Applies to establishments engaged in the retail sale of a variety of consumer goods such as, but not limited to, housewares, linens, clothing, toys, and candy. In earlier years establishments subject to this classification were often referred to as "5 and 10 cent stores." Although these stores carry much of the same merchandise as a department store, they are distinguishable in that variety stores are not comprised of specialized departments and do not generally carry the quantity/assortment of products that department stores do.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-18 Private mail box; safety deposit box; computer tape storage facilities - Rent or lease

Applies to establishments engaged in renting or leasing private mail boxes, safety deposit boxes, or computer and financial record storage facilities. Establishments subject to this classification will operate a secured facility where they receive and sort their customers' mail, parcels and packages from the U.S. Post Office or other parcel/package delivery companies, and package articles for shipment for their customers. They also provide a secured storage facility equipped with safety deposit boxes which they rent out on a short or long term basis. It is common for these establishments to offer additional services such as fax, and copying services.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-19 Stores: Coins, stamps, baseball cards, and comic books - Retail

Applies to establishments engaged in the retail sale of coins, stamps, baseball cards, comic books, and similar collectibles. Establishments subject to this classification may be engaged exclusively in mail order sales, sell from browse tables at collectible or trade shows, through specialty auctions, or may sell from a store location. Coin and stamp stores routinely sell magazines, periodicals, and supplies that cater to collections or hobbies. Card shops routinely sell other sports memorabilia such as autographed baseballs, footballs and basketballs, framed pictures, POGS and buttons.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-20 Stores: Book, record, cassette, compact disc, and video - Retail

Applies to establishments engaged in the retail sale or rental of new or used books, records, cassettes, compact discs or videos. Establishments subject to this classification may be

engaged exclusively in mail order sales, sell from browse tables or trade shows, through specialty auctions or may sell from a store location.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-23 Stores: Candy - Retail

Applies to establishments engaged in the retail sale of packaged and unpackaged candy they have purchased from others.

This classification excludes establishments engaged in the on-premise manufacture of candy and the subsequent retail sale of these products which are to be reported separately in classification 3905; and establishments engaged in the manufacture of candy or confections for wholesale to retail establishments or distributors which are to be reported separately in classification 3906.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-24 Stores: Cigarette and tobacco - Retail

Applies to establishments engaged in the retail sale of cigarettes, tobacco, and related products such as, but not limited to, pipes, pipe cleaning supplies, rolling machines, cigarette papers, lighters, lighter fluid, and cigarette cases.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-25 Stores: Telephones - Retail

Applies to establishments engaged in the retail sale of telephones, pagers, and cell phones. Establishments subject to this classification are not a utility company in that they do not operate telephone exchanges and are not regulated by the utilities and transportation commission of Washington. Their operations are limited to the sale of communication hardware. Stores subject to this classification may arrange activation and service for their customer, or the customer may contact the service provider directly.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-27 Stores: Stereo components - Retail

Applies to establishments engaged in the retail sale of stereo components. Establishments subject to this classification will sell a variety of audio and video appliances such as, but not limited to, video players, stereos and portable televisions. These establishments may also sell and install automobile stereo speaker systems and car phone systems; however, the installation is not covered in classification 6406-27.

This classification excludes the installation, service or repair of home or car stereos and car phone systems which are to be reported separately in classification 0607, and establishments engaged in the sale of stereo and television console sets, big screen televisions, or other major appliances which are to be reported separately in classification 6306.

Special note: Classification 6306 applies to any establishment that sells TV console sets or big screen TVs, even if the majority of their inventory is stereo components and/or

portable TVs. Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-29 Stores: Toys - Retail

Applies to establishments engaged in the retail sale of a variety of toys, games, and related items for persons of all ages. Merchandise includes, but is not limited to, video games, tricycles or bicycles, books, dolls and stuffed animals, outdoor play equipment, and specialty clothing.

This classification excludes establishments engaged in the retail sale of sporting goods and bicycles which are to be reported separately in classification 6309. This classification is distinguishable from businesses in classification 6309 in that the principle products of stores subject to classification 6406 are toys and games, as compared to stores in classification 6309 which are primarily engaged in the sales of sporting goods and bicycles.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-30 Stores: Cosmetics - Retail

Applies to establishments engaged in the retail sale of cosmetics and fragrances. Related services usually offered by these types of stores include consultations with clients regarding make-up techniques, styles, and colors.

This classification excludes hair and nail salons which are to be reported separately in classification 6501.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-31 Stores: Housewares - Retail

Applies to establishments engaged in the retail sale of housewares such as, but not limited to, pots and pans, flatware, dishes, towels, canister sets, soap dishes, towel bars, waste baskets, plant stands, and curtains or draperies.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-33 Stores: Gift shops, N.O.C. - Retail

Applies to establishments engaged in the retail sale of gift items not covered by another classification (N.O.C.) such as, but not limited to, crystal and silver serving pieces, china, cut glass, picture frames, wedding and shower books and invitations, special occasion cards, decorative statues, boxed candy, and ornaments. This merchandise tends to be of a finer selection than the everyday wares common in variety shops.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-40 Retail product demonstrators

Applies to workers who show and explain, but do not sell, specific products in a retail setting. Product demonstrators can work in a variety of locations, such as stores, fairs, and exhibition sites. The classification includes associated administrative duties, set up and break down of a demonstration display space, preparing and setting out products to demonstrate, providing samples without charge, and cleaning up.

This classification allows the use of kitchen appliances and utensils to prepare food samples, and the use of nonpowered hand tools and battery-powered screwdrivers to assemble and disassemble displays and products packaged for end-user assembly. Workers reported in this classification can have no duties during their work shift other than those permitted for product demonstrators.

This classification excludes:

• Stocking shelves;

• Selling;

• Setting up product displays intended to remain after the product demonstration;

• Delivery;

• Demonstrating machinery or equipment;

Special note: This is a special exception classification that is only applicable to manufacturers, wholesalers, and businesses specializing in providing product demonstrators and their services to others.

• Product demonstrators employed by a retail store, are to be reported under the store's basic classification;

• Product demonstrators employed by a temporary help service, are to be reported in classification 7106.

WSR 12-22-059

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 6, 2012, 1:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-09-026.

Title of Rule and Other Identifying Information: Rules related to the self-employment assistance program (SEAP) in chapter 192-200 WAC, School or training, and a new rule, WAC 192-190-105, describing how self-employment income is to be reported.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 212 Maple Park Avenue S.E., Olympia, WA, on December 13, 2012, at 10:00 a.m.

Date of Intended Adoption: December 17, 2012.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-0911, by December 12, 2012.

Assistance for Persons with Disabilities: Contact Kintu Nnambi by December 12, 2012, TTY (800) 833-6384 or (360) 725-9454.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Sections in chapter 192-200 WAC are amended for consistency with changes to SEAP adopted by the legislature under HB [SB] 6289. The changes clarify that eligibility for SEAP is expanded to include individuals potentially eligible for commissioner approved training. WAC 192-190-105 establishes procedures for reporting self-employment income.

Reasons Supporting Proposal: The rules implement changes made by chapter 40, Laws of 2012 (HB [SB] 6289).

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.20.250.

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

Name of Proponent: Employment security department, governmental.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. Adoption of the proposed rules will not impose costs on businesses. The regulations do not impose any new regulatory requirements on any employers.

A cost-benefit analysis is not required under RCW 34.05.328. The rules are not significant legislative rules as defined under RCW 34.05.328.

November 2, 2012

Paul Trause
Commissioner

NEW SECTION

WAC 192-190-105 How do I report self-employment income? (1) Report self-employment when earned, not when paid.

(2) Report self-employment income as a net figure, after your reasonable business expenses are deducted from your gross income.

(3) If you are not sure what these amounts are, consult your accountant, tax advisor or other financial professional.

(4) You may be required to provide records of your income and expenses.

(5) If you fail to provide records of your income and expenses when requested, the department will presume you earned too much in your self-employment to qualify for benefits for the period for which records were requested.

AMENDATORY SECTION (Amending WSR 07-23-129, filed 11/21/07, effective 1/1/08)

WAC 192-200-020 Commissioner approval of training—RCW 50.20.043. (1) **How do I apply for commissioner approved training?** If you wish to attend school or training while you receive unemployment benefits, and the training will interfere with your availability for full-time work, the training must be approved by the department. Contact the department and ask for an application for commissioner approved training. Your completed application must be returned to the unemployment insurance claims (~~telecenter~~) center. We will send you a decision, in writing, denying or approving your training application.

(2) **What factors will the department consider when reviewing my application?** The department will consider the following factors:

(a) Your plan for completion of the training;

(b) The nature of the training facility and the quality of the training;

(c) Whether the training relates to an occupation or skill for which there are, or are expected to be, reasonable employ-

ment opportunities in the labor markets in which you intend to seek work;

(d) Whether an oversupply of qualified workers exists;

(e) Whether you have the qualifications and aptitudes to successfully complete such training; and

(f) Whether your employment prospects in occupations in which you have training or experience do not exist or have substantially diminished in the labor market to the extent that the department determines you will probably be unemployed for a lengthy period. These diminished prospects could be the result of business or economic conditions in the area, or due to personal reasons such as your health, physical fitness, criminal background, or other circumstances of a similar nature.

(3) **What about training that is required by my job?**

The commissioner will approve training that is required within an occupation if:

(a) The training is a condition of your continued employment;

(b) The scheduling of the training is determined by your employer or a work related entity, and not by you (the claimant); and

(c) The training meets the requirements of subsections (2)(a), (b), (c), (d), and (e) of this section.

(4) **Can academic training be approved?** An academic training course may be approved if the conditions of subsections (1) and (2) of this section are met, and the training meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

(5) **Can these requirements be waived?** In the case of individuals with physical or sensory handicaps, or in other unusual individual circumstances, a written decision of the commissioner may waive any of the requirements of this section on an individual basis.

(6) ~~((This section does not apply to training in a))~~ **Do these requirements apply to the self-employment assistance program?** For purposes of the self-employment assistance program under RCW 50.20.250;

(a) This section does not apply to individuals who are profiled as likely to exhaust benefits as described in WAC 192-200-040; and

(b) Subsection (2)(c) of this section does not apply to individuals otherwise eligible for commissioner approved training under RCW 50.20.043 and this section.

AMENDATORY SECTION (Amending WSR 07-23-129, filed 11/21/07, effective 1/1/08)

WAC 192-200-040 Who is eligible to participate in the self-employment assistance program? (1) **Eligibility.** To be eligible for the self-employment assistance program, you must:

(a) Be otherwise eligible for regular unemployment benefits(~~(s)~~) and;

~~((b))~~ (i) Have been identified by the department as likely to exhaust regular unemployment benefits using the profiling model established under RCW 50.20.011 and WAC 192-180-060; or

(ii) Eligible for commissioner approved training as provided in WAC 192-200-020; and

~~((e))~~ (b) Enroll and satisfactorily participate in a self-employment assistance program approved by the commissioner.

(2) **Likely to exhaust.** The department will use the following process to identify claimants who are likely to exhaust for purposes of the self-employment assistance program:

(a) Assign profile scores to individuals with a claim ending during the most recent federal fiscal year (October 1 through September 30) using the model described in WAC 192-180-060.

(b) Find the number of these claimants who actually exhausted regular unemployment benefits and determine their percentage of the entire profiled population(~~(%)~~).

(c) The result will determine the percentile of profiled scores that will be identified as likely to exhaust. For example, assume during the most recent federal fiscal year, fifteen percent of profiled claimants actually exhaust benefits. This means the eighty-fifth percentile of profile scores will be used to identify claimants who are likely to exhaust.

(d) Determine the lowest score assigned to claimants within this group.

(e) Claimants with that score or higher who file new claims during the following calendar year will be notified by the department they are potentially eligible for the self-employment assistance program.

(3) **Satisfactory participation.** The department will consider you to be satisfactorily participating if you are making satisfactory progress as defined in WAC 192-200-030 (1)(c).

AMENDATORY SECTION (Amending WSR 07-23-129, filed 11/21/07, effective 1/1/08)

WAC 192-200-050 What criteria will the department use to approve my self-employment assistance training plan? (1) The department will consider the following factors when reviewing your application for the self-employment assistance program:

~~((1))~~ (a) That you have an adequate (~~(financial)~~) plan for completing training if your unemployment benefits run out before you complete training; and

~~((2))~~ (b) That you have the qualifications and aptitudes to successfully complete the training(~~(and~~

~~(3) That you have certified you will not compete with your former employer for up to one year after completing your training program)).~~

~~((4))~~ (2) If you modify your training plan, the changes must be approved in advance by your training provider and the department.

AMENDATORY SECTION (Amending WSR 07-23-129, filed 11/21/07, effective 1/1/08)

WAC 192-200-055 What other factors affect my eligibility for benefits under the self-employment assistance program? (1) Any (~~(remuneration)~~) net income you receive while enrolled in a self-employment assistance training program will be deducted from your weekly benefit amount as required under RCW 50.20.130. Net income based on self-

employment must be reported as provided in WAC 192-190-105.

(2) If you complete your training program before your unemployment benefits run out, you are no longer eligible for benefits unless you meet the availability for work and job search requirements of RCW 50.20.010 (1)(c).

WSR 12-22-061
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed November 6, 2012, 1:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-18-071.

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): Capital Plaza Building, Fourth Floor Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 18, 2012, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: December 18, 2012.

Submit Written Comments to: Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, by December 11, 2012, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply to the first half of 2013.

Further, RCW 84.33.140 requires that forest land values be adjusted annually by a statutory formula contained in RCW 84.33.140(3). The department anticipates amending the forest land values rule (WAC 458-40-540) to adjust the table of forest land values in Washington as required by statute. County assessors will use these published land values for property tax purposes in 2013.

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

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1300.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Mark E. Bohe, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1574, e-mail markbohe@dor.wa.gov. The proposed rule is a significant legislative rule as defined by RCW 34.05.328.

November 6, 2012
 Alan R. Lynn
 Rules Coordinator

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

WAC 458-40-540 Forest land values—((2012)) 2013. The forest land values, per acre, for each grade of forest land for the ((2012)) 2013 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2012)) 2013
		VALUES ((ROUNDED)) PER ACRE
1	1	\$((495)) 191
	2	((193)) 189
	3	((181)) 177
	4	((131)) 128
2	1	((164)) 161
	2	((159)) 156
	3	((152)) 149
	4	((109)) 107
3	1	((128)) 125
	2	((124)) 121
	3	((123)) 120
	4	((95)) 93
4	1	((99)) 97
	2	((96)) 94
	3	((95)) 93
	4	((72)) 70
5	1	((71)) 70
	2	((64)) 63
	3	((63)) 62
	4	((44)) 43
6	1	((36)) 35
	2	((34)) 33
	3	((34)) 33
	4	((32)) 31
7	1	16
	2	16
	3	15
	4	15
8	1	1

AMENDATORY SECTION (Amending WSR 12-14-065, filed 6/29/12, effective 7/1/12)

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 ((July)) January 1 through ((December 31, 2012)) June 30, 2013:

((PROPOSED STUMPAGE VALUE TABLE))
Washington State Department of Revenue
STUMPAGE VALUE TABLE

((July)) January 1 through ((December 31, 2012)) June 30, 2013

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
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
		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

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Other Christmas Trees ⁽⁹⁾	TFX	1-6	0.50	0.50	0.50	0.50	0.50
Douglas-fir ⁽²⁾	DF	1	\$344	\$337	\$330	\$323	\$316
		2	389	382	375	368	361
		3	321	314	307	300	293
		4	389	382	375	368	361
		5	380	373	366	359	352
		6	210	203	196	189	182
Western Hemlock and	WH	1	290	283	276	269	262
Other Conifer ⁽²⁾		2	324	317	310	303	296
		3	249	242	235	228	221
		4	303	296	289	282	275
		5	343	336	329	322	315
		6	199	192	185	178	171
Western Redcedar ⁽⁴⁾	RC	1-5	756	749	742	735	728
		6	509	502	495	488	481
Ponderosa Pine ⁽⁵⁾	PP	1-6	180	173	166	159	152
Red Alder	RA	1-5	509	502	495	488	481
Black Cottonwood	BC	1-5	105	98	91	84	77
Other Hardwood	OH	1-5	221	214	207	200	193
		6	59	52	45	38	31
Douglas-fir Poles & Piles	DFL	1-5	797	790	783	776	769
Western Redcedar Poles	RCL	1-5	1358	1351	1344	1337	1330
		6	757	750	743	736	729
Chipwood ⁽⁶⁾	CHW	1-5	19	18	17	16	15
		6	7	6	5	4	3
Small Logs ⁽⁶⁾	SML	6	24	23	22	21	20
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-5	164	157	150	143	136
Posts ⁽⁸⁾	LPP	1-5	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-5	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-5	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 ~~((July))~~ January 1 through ((December 31, 2012)) June 30, 2013:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, and 5
 ((July)) January 1 through ((December 31, 2012)) June 30, 2013

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

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
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 6
(July) January 1 through (December 31, 2012) June 30, 2013**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale

SVAs 1 through 5 only: \$((+2.00)) 11.00

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass,** has a \$0/ton stumpage value.

**WSR 12-22-062
PROPOSED RULES
HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed November 6, 2012, 2:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-026.

Title of Rule and Other Identifying Information: WAC 388-526-2610 Prehearing reviews for clients who request a fair hearing.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504, on December

11, 2012, at 10:00 a.m. Metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000.

Date of Intended Adoption: Not sooner than December 12, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on December 11, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by December 3, 2012, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repeal WAC 388-526-2610.

HCA is establishing and consolidating rules related to medicaid funded services into a single chapter within HCA rules under chapter 182-526 WAC. This need is based on the change of the single state medicaid agency from the department of social and health services to HCA.

Statutory Authority for Adoption: Section 53, chapter 15, Laws of 2011, 2E2SHB 1738; chapters 74.09, 34.05 RCW, 10-08 WAC.

Statute Being Implemented: Section 53, chapter 15, Laws of 2011, 2E2SHB 1738.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, HCA, P.O. Box 45504, Olympia, WA, (360) 725-1306; Implementation and Enforcement: Annette Schuffenhauer, HCA, P.O. Box 45504, Olympia, WA, (360) 725-1254.

No small business economic impact statement has been prepared under chapter 19.85 RCW. HCA has analyzed the proposed rules and concludes that they do not impose more than minor costs for affected small businesses.

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

November 6, 2012

Kevin M. Sullivan

Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-526-2610	Prehearing reviews for clients who request a fair hearing.
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WSR 12-22-065

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 6, 2012, 4:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-117.

Title of Rule and Other Identifying Information: Chapter 392-191 WAC, School personnel—Evaluation of the professional performance capabilities.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 Washington S.E., Billings Room, 3rd Floor, Olympia, WA 98504-7200, on December 11, 2012, at 9:30 a.m.

Date of Intended Adoption: December 11, 2012.

Submit Written Comments to: Michaela Miller, Old Capitol Building, 600 Washington S.E., Olympia, WA 98504-7200, e-mail Michaela.miller@k12.wa.us, fax (360) 753-1953, by December 10, 2012.

Assistance for Persons with Disabilities: Contact Wanda Griffin by December 5, 2012, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes:

- (a) Definitions.
- (b) Evaluation requirements.
- (c) Minimum evaluation criteria-certificated classroom teachers and principals.
- (d) Frequency, conduct and outcomes of a comprehensive and focused evaluation-certificated classroom teachers and principals.
- (e) Conduct of student growth inquiry-certificated classroom teachers and principals.
- (f) Summative performance rating descriptors-certificated classroom teachers and principals.

Reasons Supporting Proposal: RCW 28A.405.100 requires OSPI to amend rules "from time to time" regarding the criteria for evaluation of educators. The statute additionally requires OSPI to create specific rules regarding the new evaluation systems for both certificated classroom teachers and principals. Specifically, these rules must include the summative descriptors and the summative methodology for the comprehensive and focused evaluation systems.

Statutory Authority for Adoption: RCW 28A.405.100.

Statute Being Implemented: RCW 28A.405.100.

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Michaela Miller, Old Capitol Building, 600 Washington S.E., Olympia, WA 98504-7200, (360) 725-6116; and Enforcement: Alan Burke, Old Capitol Building, 600 Washington S.E., Olympia, WA 98504-7200, (360) 725-6343.

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

November 6, 2012

Randy Dorn
State Superintendent
of Public Instruction

Chapter 392-191A WAC

SCHOOL PERSONNEL—EVALUATION OF THE PROFESSIONAL PERFORMANCE CAPABILITIES

NEW SECTION

WAC 392-191A-010 Authority. The general authority for this chapter is RCW 28A.405.100 which authorizes the superintendent of public instruction to adopt minimum criteria for the evaluation by districts of professional educators.

NEW SECTION

WAC 392-191A-020 Purpose. The purpose of this chapter is to establish the minimum criteria, minimum procedural standards, summative methodology and summative descriptors to be adopted in accordance with chapter 41.59 RCW by districts for the evaluation of the professional performance capabilities and development of certificated classroom teachers, principals, assistant principals, and certificated support personnel.

NEW SECTION

WAC 392-191A-030 Definitions. The following definitions apply to the terms used in this chapter:

"Certificated classroom teacher" means a certificated employee who provides instruction to students and holds one or more of the certificates pursuant to WAC 181-79A-140 (1) through (3) and (6)(a) through (e) and (g).

"Certificated principal" and "assistant principals" means a person who is employed to supervise the operation and management of a school as provided by RCW 28A.400.100 and holds certificates pursuant to WAC 181-79A-140 (4)(a) or (6)(h).

"Certificated support personnel" means a certificated employee who provides services to students and holds one or more of the educational staff associate certificates pursuant to WAC 181-79A-140(5).

"Evaluation" shall mean the ongoing process of identifying, gathering and using information to improve professional performance, assess total job effectiveness, and make personnel decisions.

"Evaluation criteria" means minimum evaluation criteria for classroom teachers specified in WAC 392-191-006, the minimum evaluation criteria for principals specified in WAC 392-191-014 and the minimum evaluation criteria for certificated support personnel specified in WAC 392-191-020.

"Evidence" means observed practice, products or results of a certificated classroom teacher or certificated principal's work that demonstrates knowledge and skills of the educator with respect to the four-level rating system.

"Four-level rating system" means the continuum of performance that indicates the extent to which the criteria have been met or exceeded.

"Instructional framework" means one of the approved instructional frameworks adopted by the superintendent of public instruction to support the new evaluation system pursuant to RCW 28A.405.100.

"Leadership framework" means one of the approved leadership frameworks adopted by the superintendent of public instruction to support the new evaluation system pursuant to RCW 28A.405.100.

"Observe" or "observation" means the gathering of evidence made through classroom or worksite visits for the purpose of examining evidence over time against the instructional or leadership framework rubrics pursuant to this section.

"Rubrics" or "rubric row" means the descriptions of practice used to capture evidence and classify teaching or leadership performance using the evaluation criteria and the four-level rating system.

"Scoring band" means the adopted range of scores used to determine the final summative score for a certificated classroom teacher or principal.

"Student growth" means the change in student achievement between two points in time.

"Student growth data" means relevant and available multiple measures using classroom-based, school-based, district-based, and state-based tools.

"Summative performance ratings" means the four performance levels applied using the four-level rating system: Level 1 - Unsatisfactory; Level 2 - Basic; Level 3 - Proficient; Level 4 - Distinguished.

NEW SECTION

WAC 392-191A-040 Evaluation requirements. Local school districts shall establish and implement on or before September 1, 2013, an evaluation program consisting of the following:

(1) Evaluation criteria meeting the minimum standards specified in WAC 392-191-010 and 392-191-020;

(2) Evaluation procedures meeting the minimum standards specified in this chapter;

(3) Evaluation criteria and procedures as specified in RCW 28A.405.100.

NEW SECTION

WAC 392-191A-050 Minimum procedural standards—Purposes of evaluation. The purposes of evaluations of certificated classroom teachers, certificated principals, and assistant principals shall be, at a minimum:

(1) To acknowledge the critical importance of teacher and leadership quality and support professional learning as the underpinning of the new evaluation system.

(2) To identify, in consultation with classroom teachers, principals, and assistant principals, particular areas in which the professional performance is distinguished, proficient, basic or unsatisfactory, and particular areas in which the classroom teacher, principal, or assistant principal needs to improve his or her performance.

(3) To assist classroom teachers and certificated principals and assistant principals, who have identified areas needing improvement, in making those improvements.

NEW SECTION

WAC 392-191A-060 Minimum evaluation criteria—Certificated classroom teachers. The following are the minimum evaluation criteria and accompanying descriptors for certificated classroom teachers:

(1) Centering instruction on high expectations for student achievement. The related descriptor is: Expectations; the teacher communicates high expectations for student learning.

(2) Demonstrating effective teaching practices. The related descriptor is: Instruction; the teacher uses research-based instructional practices to meet the needs of all students.

(3) Recognizing individual student learning needs and developing strategies to address those needs. The related descriptor is: Differentiation; the teacher acquires and uses specific knowledge about students' cultural, individual, intellectual and social development and uses that knowledge to adjust their practice by employing strategies that advance student learning.

(4) Providing clear and intentional focus on subject matter content and curriculum. The related descriptor is: Content knowledge; the teacher uses content area knowledge, learning standards, appropriate pedagogy and resources to design and deliver curricula and instruction to impact student learning.

(5) Fostering and managing a safe, positive learning environment. The related descriptor is: Learning environment; the teacher fosters and manages a safe and inclusive learning environment that takes into account: Physical, emotional, and intellectual well-being of students.

(6) Using multiple student data elements to modify instruction and improve student learning. The related descriptor is: Assessment; the teacher uses multiple data elements (both formative and summative) to plan, inform and adjust instruction, and evaluate student learning.

(7) Communicating and collaborating with parents and school community. The related descriptor is: Families and community; the teacher communicates and collaborates with students, families and all educational stakeholders in an ethical and professional manner to promote student learning.

(8) Exhibiting collaborative and collegial practices focused on improving instructional practice and student learning. The related descriptor is: Professional practice; the teacher participates collaboratively in the educational community to improve instruction, advance the knowledge and practice of teaching as a profession, and ultimately impact student learning.

NEW SECTION

WAC 392-191A-070 Minimum procedural standards—Frequency of comprehensive evaluation. (1) Districts must observe all classroom teachers for the purposes of a comprehensive evaluation at least twice each school year in the performance of their assigned duties. At least one such observation must be for a period of thirty minutes. Districts

must observe all employees who are subject to a comprehensive evaluation for a period of no less than sixty minutes during each school year.

(2) Districts must observe new employees at least once for a total observation time of thirty minutes during the first ninety calendar days of the new employee's employment period.

(3) Districts must observe employees in the third year of provisional status at least three times in the performance of the employee. The total observation time for the school year must not be less than ninety minutes for such employees.

NEW SECTION

WAC 392-191A-080 Minimum procedural standards—Conduct of the comprehensive evaluation. The conduct of the evaluation of classroom teachers must include, at a minimum, the following:

(1) All eight teaching criteria must contribute to the overall summative evaluation and must be completed at least once every four years.

(2) The evaluation must include an assessment of the criteria using the instructional framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(3) The principal or his/her designee at the school to which the certificated employee is assigned must make observations and written comments pursuant to RCW 28A.405.100.

(4) The opportunity for the employee to attach written comments to his/her evaluation report.

(5) Summative criterion scores, including instructional and student growth rubrics, must be determined by an analysis of evidence.

(6) An overall summative score shall be derived by a calculation of all summative criterion scores and determining the final four-level rating based on the superintendent of public instruction's determined summative evaluation scoring band.

(7) Upon completion of the overall summative scoring process, the evaluator will combine only the student growth rubric scores to assess the certificated classroom teacher's student growth impact rating.

(8) The student growth impact rating will be determined by the superintendent of public instruction's student impact rating scoring band.

(9) A student growth score of "1" in any of the rubric rows will result in an overall low student growth impact rating.

(10) Evaluators must analyze the student growth score in light of the overall summative score and determine outcomes.

NEW SECTION

WAC 392-191A-090 Minimum procedural standards—Outcomes of the student growth rating. The following outcomes of the student growth impact rating analysis will apply:

(1) Certificated classroom teachers with preliminary rating of distinguished with low student growth rating will receive an overall proficient rating.

(2) Certificated classroom teachers with low student growth rating will engage, with their evaluator, in a student growth inquiry pursuant to WAC 392-191-010.

(3) Certificated classroom teachers with a preliminary rating of distinguished with average or high student growth rating will receive an overall distinguished rating and will be formally recognized and/or rewarded.

(4) The evaluations of certificated classroom teachers with a preliminary rating of unsatisfactory and high student growth rating will be reviewed by the evaluator's supervisor.

NEW SECTION

WAC 392-191A-100 Minimum procedural standards—Conduct of a student growth inquiry. Within two months of receiving the low student growth score or at the beginning of the following school year, whichever is later, one or more of the following must be initiated by the evaluator:

- Examine student growth data in conjunction with other evidence including observation, artifacts and other student and teacher information based on appropriate classroom, school, district and state-based tools and practices;

- Examine extenuating circumstances which may include one or more of the following: Goal setting process; content and expectations; student attendance; extent to which standards, curriculum and assessment are aligned;

- Schedule monthly conferences focused on improving student growth to include one or more of the following topics: Student growth goal revisions, refinement, and progress; best practices related to instruction areas in need of attention; best practices related to student growth data collection and interpretation;

- Create and implement a professional development plan to address student growth areas.

NEW SECTION

WAC 392-191A-110 Minimum procedural standards—Frequency of observation for focused evaluation. If the evaluation of the certificated classroom teacher includes an assessment of a criterion that requires observation the following shall apply: Districts must observe all classroom teachers for the purposes of focused evaluation at least twice each school year in the performance of their assigned duties. At least one such observation must be for a period of thirty minutes. Districts must observe all employees who are subject to a focused evaluation for a period of no less than sixty minutes during each school year.

NEW SECTION

WAC 392-191A-120 Minimum procedural standards—Conduct of the focused evaluation. The conduct of the evaluation of classroom teachers must include, at a minimum, the following:

(1) One of the eight criterion for certificated classroom teachers must be assessed in every year that a comprehensive evaluation is not required.

(2) The selected criterion must be approved by the teacher's evaluator and may have been identified in a previous comprehensive summative evaluation as benefiting from additional attention.

(3) The evaluation must include an assessment of the criterion using the instructional framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(4) The focused evaluation will include the student growth rubrics of the selected criterion. If criterion 3, 6 or 8 are selected, evaluators will use those student growth rubrics. If criterion 1, 2, 4, 5, or 7 is selected, evaluators will use criterion 6 student growth rubrics.

(5) A summative score is determined through the scoring of the instructional and student growth rubrics for the criterion selected.

NEW SECTION

WAC 392-191A-130 Minimum procedural standards—Procedures to be used in making evaluations. The following procedures shall be used in making evaluations:

(1) Following each observation, or series of observations, the principal or his/her designee must:

(a) Promptly document the results of the observation in writing; and

(b) Provide the employee with a copy of the written observation report within three days after such report is prepared.

(2) Each classroom teacher will have the opportunity for a minimum of two confidential conferences during each school year with his/her principal or principal's designee either:

(a) Following receipt of the written evaluation results; or

(b) At a time mutually satisfactory to the participants.

(3) The purpose of each such conference will be to provide additional evidence by either the evaluator or certificated classroom teacher to aid in the assessment of the certificated classroom teacher's professional performance against the instructional framework rubrics.

(4) If other evaluators are used, additional procedures may be adopted pursuant to local policy.

NEW SECTION

WAC 392-191A-140 Summative performance ratings—Descriptors. (1) **Unsatisfactory:** Professional practice at Level 1 shows evidence of not understanding the concepts underlying individual components of the criteria. This level of practice is ineffective and inefficient and may represent practice that is harmful to student learning progress, professional learning environment, or individual teaching or leading practice. This level requires immediate intervention.

(2) **Basic:** Professional practice at Level 2 shows a developing understanding of the knowledge and skills of the criteria required to practice, but performance is inconsistent over a period of time due to lack of experience, expertise,

and/or commitment. This level may be considered minimally competent for teachers or principals early in their careers but insufficient for more experienced teachers or principals. This level requires specific support.

(3) **Proficient:** Professional practice at Level 3 shows evidence of thorough knowledge of all aspects of the profession. This is successful, accomplished, professional, and effective practice. Teaching and leading at this level utilizes a broad repertoire of strategies and activities to support student learning. At this level, teaching and leading a school is strengthened and expanded through purposeful, collaborative sharing and learning with colleagues as well as ongoing self-reflection and professional improvement.

(4) **Distinguished:** Professional practice at Level 4 is that of a master professional whose practices operate at a qualitatively different level from those of other professional peers. To achieve this rating, a teacher or principal would need to have received a majority of distinguished ratings on the criterion scores. A teacher or principal at this level must show evidence of average to high impact on student growth. Ongoing, reflective teaching and leading is demonstrated through the highest level of expertise and commitment to all students' learning, challenging professional growth, and collaborative practice.

NEW SECTION

WAC 392-191A-150 Minimum evaluation criteria—Certificated principals and assistant principals. The following are the minimum evaluation criteria and accompanying descriptors for certificated principals and assistant principals:

(1) Creating a school culture that promotes the ongoing improvement of learning and teaching for students and staff. The related descriptor is: An effective leader advocates, nurtures, and sustains a school culture and instructional program that promote student learning and staff professional growth.

(2) Demonstrating commitment to closing the achievement gap. The related descriptor is: Effective leaders who have a commitment to closing identified gaps in achievement between groups of students, monitor subgroup data and develop and encourage strategies to eliminate those gaps.

(3) Providing for school safety. The related descriptor is: An effective leader teams with the school's community to develop routines and expectations that create a physically and emotionally safe learning environment.

(4) Leading the development, implementation and evaluation of a data-driven plan for increasing student achievement, including the use of multiple student data elements. The related descriptor is: Effective leaders rely on data to promote improvement through school improvement plans in all aspects of the school and across all of the eight principal evaluation criteria.

(5) Assisting instructional staff with alignment of curriculum, instruction, and assessment with state and local district learning goals. The related descriptor is: An effective leader assumes responsibility to assist staff with the alignment of their teaching and classroom assessments with the state's learning goals and the district's curriculum.

(6) Monitoring, assisting, and evaluating effective instruction and assessment practices. The related descriptor is: An effective leader monitors teaching and uses the evaluation process and other strategies to support teachers' efforts to strengthen their teaching and learning in classrooms.

(7) Managing both staff and fiscal resources to support student achievement and legal responsibilities. The related descriptor is: An effective leader manages human and fiscal resources in ways that enhance the likelihood that students will thrive and succeed in achieving the school's goals for them.

(8) Partnering with the school community to promote student learning. The related descriptor is: An effective leader engages families and the community in ways that increase the success of students.

NEW SECTION

WAC 392-191A-160 Minimum procedural standards—Conduct of the comprehensive evaluation. The conduct of the evaluation of principals and assistant principals shall include, at a minimum, the following:

(1) All eight principal criteria must contribute to the overall summative evaluation.

(2) The evaluation cycle must include an assessment of the criteria using the leadership framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(3) Summative criterion scores, including leadership and student growth rubrics, must be determined by an analysis of evidence.

(4) An overall summative score shall be derived by a calculation of all summative criterion scores and determining the final four level rating based on the superintendent of public instruction's determined summative evaluation scoring band.

(5) Upon completion of the overall summative scoring process, the evaluator will combine only the student growth rubric scores to assess the certificated principal or assistant principal's student growth impact rating.

(6) The student growth impact rating will be determined by the superintendent of public instruction's student impact rating scoring band.

(7) A student growth score of "1" in any of the rubric rows will result in an overall low student growth impact rating.

NEW SECTION

WAC 392-191A-170 Minimum procedural standards—Outcomes of the comprehensive evaluation. The following outcomes of the student growth impact rating analysis will apply:

(1) Certificated principals and assistant principals with preliminary rating of distinguished with low student growth rating will receive an overall proficient rating.

(2) Certificated principals and assistant principals with low student growth rating will engage, with their evaluator, in a student growth inquiry focusing on the specific areas of weak student impact.

(3) Certificated principals and assistant principals with preliminary rating of distinguished with average or high student growth rating: These educators will receive an overall distinguished rating and will be formally recognized and/or rewarded.

(4) The evaluations of certificated principals and assistant principals with preliminary rating of unsatisfactory and high student growth rating will be reviewed by the evaluator's supervisor.

NEW SECTION

WAC 392-191A-180 Minimum procedural standards—Conduct of a student growth inquiry. Within two months of receiving the low student growth score or at the beginning of the following school year, whichever is later, one or more of the following must be initiated by the evaluator:

- Examine student growth data in conjunction with other evidence including observation, artifacts and other student and teacher information based on appropriate classroom, school, district and state-based tools and practices;
- Examine extenuating circumstances which may include one or more of the following: Goal setting process; content and expectations; attendance; extent to which standards, curriculum and assessment are aligned;
- Schedule monthly conferences focused on improving student growth to include one or more of the following topics: Student growth goal revisions, refinement, and progress; best practices related to instruction areas in need of attention; best practices related to student growth data collection and interpretation;
- Create and implement a professional development plan to address student growth areas.

NEW SECTION

WAC 392-191A-190 Minimum procedural standards—Conduct of the focused evaluation. The conduct of the evaluation of principals or assistant principals must include, at a minimum, the following:

- (1) One of the eight criterion for certificated principals or assistant principals must be assessed in every year that a comprehensive evaluation is not required.
- (2) The selected criterion must be approved by the principal's evaluator and may have been identified in a previous comprehensive summative evaluation as benefiting from additional attention.
- (3) The evaluation must include an assessment of the criterion using the leadership framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.
- (4) The focused evaluation will include the student growth rubrics selected by the principal or assistant principal and approved by the principal's evaluator.
- (5) A summative score is determined through the scoring of the leadership and student growth rubrics for the criterion selected.

NEW SECTION

WAC 392-191A-200 Summative performance ratings—Descriptors. (1) **Unsatisfactory:** Professional practice at Level 1 shows evidence of not understanding the concepts underlying individual components of the criteria. This level of practice is ineffective and inefficient and may represent practice that is harmful to student learning progress, professional learning environment, or individual teaching or leading practice. This level requires immediate intervention.

(2) **Basic:** Professional practice at Level 2 shows a developing understanding of the knowledge and skills of the criteria required to practice, but performance is inconsistent over a period of time due to lack of experience, expertise, and/or commitment. This level may be considered minimally competent for teachers or principals early in their careers but insufficient for more experienced teachers or principals. This level requires specific support.

(3) **Proficient:** Professional practice at Level 3 shows evidence of thorough knowledge of all aspects of the profession. This is successful, accomplished, professional, and effective practice. Teaching and leading at this level utilizes a broad repertoire of strategies and activities to support student learning. At this level, teaching and leading a school is strengthened and expanded through purposeful, collaborative sharing and learning with colleagues as well as ongoing self-reflection and professional improvement.

(4) **Distinguished:** Professional practice at Level 4 is that of a master professional whose practices operate at a qualitatively different level from those of other professional peers. To achieve this rating, a teacher or principal would need to have received a majority of distinguished ratings on the criterion scores. A teacher or principal at this level must show evidence of average to high impact on student growth. Ongoing, reflective teaching and leading is demonstrated through the highest level of expertise and commitment to all students' learning, challenging professional growth, and collaborative practice.

NEW SECTION

WAC 392-191A-210 Minimum evaluation criteria—Certificated support personnel. The following are the minimum criteria for certificated support personnel:

- (1) Knowledge and scholarship in special field. Each certificated support person demonstrates a depth and breadth of knowledge of theory and content in the special field. He/she demonstrates an understanding of and knowledge about common school education and the educational milieu grades K-12, and demonstrates the ability to integrate the area of specialty into the total school milieu.
- (2) Specialized skills. Each certificated support person demonstrates in his/her performance a competent level of skill and knowledge in designing and conducting specialized programs of prevention, instruction, remediation and evaluation.
- (3) Management of special and technical environment. Each certificated support person demonstrates an acceptable level of performance in managing and organizing the special materials, equipment and environment essential to the specialized programs.

(4) The support person as a professional. Each certificated support person demonstrates awareness of his/her limitations and strengths and demonstrates continued professional growth.

(5) Involvement in assisting pupils, parents, and educational personnel. Each certificated support person demonstrates an acceptable level of performance in offering specialized assistance in identifying those needing specialized programs.

NEW SECTION

WAC 392-191A-220 Minimum procedural standards—Frequency of evaluation for certificated support personnel. Each school year the frequency of evaluation shall be:

(1) All certificated support personnel shall be observed for the purposes of evaluation at least twice in the performance of their assigned duties.

(2) At least one observation shall be a minimum of thirty minutes.

(3) New employees shall be observed at least once for a total observation time of thirty minutes during the first ninety calendar days of their employment period.

(4) An employee in the third year of provisional status shall be observed at least three times in the performance of his or her duties and the total observation time for the school year shall not be less than ninety minutes.

(5) Total observation time for each employee for each school year shall be not less than sixty minutes: Provided, that after an employee has four years of satisfactory evaluations, a school district may use a short form evaluation pursuant to RCW 28A.405.100(11).

NEW SECTION

WAC 392-191A-230 Minimum procedural standards—Procedures to be used in making evaluations for certificated support personnel. The following procedures shall be used in making evaluations:

(1) The procedures stipulated in RCW 28A.405.100 shall be used by principals or their designees conducting evaluations of certificated support personnel.

(2) Following each observation, or series of observations, the principal or his/her designee shall promptly document the results of the observation in writing, and shall provide the employee with a copy thereof within three days after such report is prepared.

(3) Each certificated support personnel shall have the opportunity for a minimum of two confidential conferences during each school year with his/her principal or principal's designee either following receipt of the written observation results, or at a time mutually satisfactory to the participants. The sole purpose of each such conference shall be to provide additional information to aid the principal or his or her designee in evaluating the certificated support person (e.g., providing direction, assistance, guidance, encouragement to the employee).

(4) If other evaluators are used, additional procedures may be adopted pursuant to local policy.

NEW SECTION

WAC 392-191A-240 Minimum procedural standards—Use of evaluation results. Evaluation results shall be used:

(1) To acknowledge, recognize, and encourage excellence in professional performance.

(2) To document the level of performance by an employee of his/her assigned duties.

(3) To identify discrete areas according to the criteria included on the evaluation instrument in which the employee may need improvement.

(4) To document performance by an employee judged unsatisfactory based on the district evaluation criteria.

WSR 12-22-066
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
[Filed November 6, 2012, 5:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-16-055.

Title of Rule and Other Identifying Information: (1) Repeal WAC 208-512-210 through 208-512-300, inclusive (hereinafter "existing rule"), related to limits on loans and extensions of credit by Washington state-chartered commercial banks, generally authorized by RCW 30.04.111; and (2) adoption of a comprehensive rule by way of proposed chapter 208-512A WAC, Limits on loans and extensions of credit.

Hearing Location(s): Washington State Department of Financial Institutions, Division of Banks, 2033 Sixth Avenue, Suite 1030, Seattle, WA 98121, on December 11, 2012, at 10:00 a.m. (The public hearing will also be open to participation by teleconference in lieu of personal appearance. For more information, contact Karin Yukish at Karin.Yukish@dfi.wa.gov, or (206) 956-3229, by December 10, 2012, for the applicable toll-free number and conference code.)

Date of Intended Adoption: January 8, 2013.

Submit Written Comments to: Joseph M. Vincent, General Counsel, Washington Department of Financial Institutions, P.O. Box 41200, Olympia, WA 98504-1200, e-mail Joseph.Vincent@dfi.wa.gov, fax (360) 704-7036, by December 6, 2012.

Assistance for Persons with Disabilities: Contact Teri Vidallon by December 10, 2012, TTY (360) 664-8126 or (360) 902-8704.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making primarily restates and clarifies the provisions of the existing rule without changing their effect. However, it also adds new provisions that are:

(a) Specifically and explicitly permitted by RCW 30.04.111, 30.04.215(3), 30.08.140(16), and 32.08.157, including exceptions to the general lending limit rule related to nonconforming loans, circumstances involving a general decline in capital markets, and extraordinary emergencies (as authorized by the director upon application); and/or

(b) Mandated by Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013, related to Washington State-chartered commercial banks (Title 30 RCW) and savings banks (Title 32 RCW) treating "derivatives transactions" as "extensions of credit" and accounting for their credit exposure in relation to their concentration of "derivatives" investment according to standards generally consistent (with exceptions) to the newly adopted "lending limits" standards for "derivatives transactions" adopted by the Office of the Comptroller of the Currency, by way of 12 C.F.R. §32., in relation to national banks and federal savings associations. In this latter case, on account of RCW 32.08.157, savings banks under Title 32 RCW will be permitted, on or after January 21, 2013, to continue to engage in "derivatives transactions" (if at all), provided they are subject to the provisions of RCW 30.04.111 and the proposed rule making (chapter 208-512A WAC).

Statutory Authority for Adoption: RCW 30.04.030, 30.04.111, 43.320.040, and 43.320.050.

Statute Being Implemented: RCW 30.04.111, 30.04.215, 30.08.140, and 32.08.157.

Rule is necessary because of federal law, 12 U.S.C. §1828(y).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: See proposed rule making (shown below and made a part hereof), as follows: Repeal of WAC 208-512-210 through 208-512-300, OTS-5131.1; and proposed chapter 208-512A WAC, OTS-5132.2.

Name of Proponent: Washington state department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph M. Vincent, General Counsel, 150 Israel Road, Tumwater, WA 98501, (360) 902-0516; Implementation and Enforcement: Richard M. Riccobono, Director of Banks, 2033 Sixth Avenue, Suite 1030, Seattle, WA 98121, (206) 956-3229.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The provisions of this proposed rule making:

(a) Clarify existing statute or rule with no effect;

(b) Are specifically and explicitly permitted by RCW 30.04.111, 30.04.215(3), 30.08.140(16), and 32.08.157, including exceptions to the general lending limit rule related to nonconforming loans, circumstances involving a general decline in capital markets, and extraordinary emergencies (as authorized by the director upon application); and/or

(c) Are mandated by federal statute (i.e., Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y))).

Therefore, a small business economic impact statement is not required by reason of RCW 19.85.025(3), 19.85.061, and 34.05.310 (4)(c), (d), and (e).

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one

of the agencies listed in RCW 34.05.328 (5)(a)(i) as being required to file a cost-benefit analysis.

November 6, 2012
Joseph M. Vincent
General Counsel

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-512-210	Promulgation.
WAC 208-512-220	Purpose.
WAC 208-512-230	Definitions.
WAC 208-512-240	General limitations.
WAC 208-512-250	General limitation—Loans fully secured by readily marketable collateral.
WAC 208-512-260	Combining loans to separate borrowers.
WAC 208-512-270	Loans to corporations.
WAC 208-512-280	Loans to partnerships, joint ventures, and associations.
WAC 208-512-290	Exceptions to the lending limits.
WAC 208-512-300	Transitional rules.

Chapter 208-512A WAC

LIMITS ON LOANS AND EXTENSIONS OF CREDIT

NEW SECTION

WAC 208-512A-001 Promulgation of rules. The division of banks of the department of financial institutions (hereinafter, the "division"), after due and proper notice, and pursuant to the provisions of RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050, hereby adopts and promulgates this chapter, effective January 21, 2013.

NEW SECTION

WAC 208-512A-003 Findings and purpose. (1) The director of the division (hereinafter, the "director of banks"), by and through the director of bank's delegated authority from the director of the department of financial institutions under RCW 43.320.040 and 43.320.050, finds and determines, that pursuant to RCW 30.04.030, the division has the broad administrative authority to adopt and promulgate rules and regulations that establish and maintain appropriate standards of safety and soundness with respect to the loans and extensions of credit made by Washington state-chartered banks under Titles 30 and 32 RCW including, without limitation, nonloan investments in derivative and similar transactions.

(2) As of January 21, 2013, the effective date of section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter, "Dodd-Frank Act"), codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1828(y), a state insured bank may engage in a derivative transaction, as defined in section 5200(b)(3) of the Revised Statutes of the United States (12 U.S.C. Sec. 84 (b)(3)), only if the law with respect to lending limits of the state in which the state-insured bank is chartered takes into consideration credit exposure to derivative transactions. In addition to making loans, Washington state-chartered banks under Titles 30 and 32 RCW invest in derivative transactions as a regular and often-essential component of their overall investment strategy, including, without limitation, as a tool to manage their liquidity. It is necessary that Washington state law (including statute or regulation, or interpretation of the same by the division), be in compliance with the afore-stated federal statute and preserve the authority of banks under Titles 30 and 32 RCW to continue to engage in derivative transactions on or after January 21, 2013. Therefore, it is prudent and expeditious for the division to assert the full measure of its statutory authority to adopt this chapter so as to clearly set forth the manner in which a bank under Title 30 or 32 RCW may, in addition to its investment in other types of loans and extensions of credit, safely and soundly engage in derivative transactions.

(3) Section 610(a) of the Dodd-Frank Act, amending the National Bank Act, at 12 U.S.C. Sec. 84(b), revises the definition of "loans and extensions of credit" to include credit exposure of a national bank arising from its investment in a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. The aforementioned section 611 of the Dodd-Frank Act redefines "loans and extensions of credit" to include derivative transactions by, in effect, making derivative transactions applicable to state "lending limits" laws. Section 611 of the Dodd-Frank Act does not specifically address repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions. However, the director of banks finds and determines that it serves the convenience and advantage of depositors, borrowers, and the general public that Washington state-chartered banks and savings banks be able to continue to prudently invest in repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions despite any future contingency that may be made applicable to them by federal banking regulations. Therefore, director of banks further finds and determines that the division may, in its safety and soundness standards for state member banks and state insured banks, respectively, apply the same definition of "loans and extensions of credit" as applicable to national banks under section 610 of the Dodd-Frank Act (12 U.S.C. Sec. 84(b)), but only to the extent required by the board of governors of the Federal Reserve System (hereinafter, the "Federal Reserve Board") or the Federal Deposit Insurance Corporation (hereinafter, the "FDIC").

(4) The director of banks finds and determines that, pursuant to RCW 30.04.111(5) and 30.04.215 (3) and (5), it serves the convenience and advantage of depositors, borrow-

ers, and the general public, and further maintains the fairness of competition between state-chartered banks and national banks, that, on or after January 21, 2013, banks under Title 30 RCW be permitted to continue to invest in derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions as national banks are generally permitted to under the National Bank Act (12 U.S.C. Sec. 84(b)) and applicable rules of the Office of the Comptroller of the Currency (hereinafter, "OCC"), subject to (a) the restrictions, limitations, and requirements applicable to such powers and authorities of national banks, and (b) the authority of the division to adopt and promulgate rules for banks, which, consistent with Title 30 RCW, vary from the precise powers and authorities of national banks.

(5) The director of banks finds and determines that, pursuant to RCW 32.08.157, a mutual or stock savings bank under Title 32 RCW may be permitted to engage in derivative transactions on or after January 21, 2013, the same as for a bank under Title 30 RCW, provided it subjects itself to all of the restrictions, limitations, and requirements for exercise of any powers and authorities under RCW 30.04.111 as set forth in this chapter respecting loans and extensions of credit applicable to banks under Title 30 RCW.

(6) There are certain standards of safety and soundness embodied in definitions of terms and other provisions used in RCW 30.04.111, including, without limitation, the term "capital and surplus," which have heretofore been inconsistent with the standards for computation of lending limits for national banks under the National Bank Act and the OCC rules. Pursuant to RCW 30.04.215 (3) and (5), the director of banks finds and determines that it both serves the convenience and advantage of depositors, borrowers, and the general public, and further maintains the fairness of competition and parity between Washington state-chartered banks and national banks, if the division adopts, for purposes of RCW 30.04.111, the same definition of "capital and surplus" as permitted for national banks, while maintaining the higher general lending limit of twenty percent of "capital and surplus" for banks under Title 30 RCW than exists for national banks under the OCC rules. In addition, the director of banks finds and determines that changes in other definitions of terms and technical provisions, as set forth in this chapter, serve the convenience and advantage of depositors, borrowers, and the general public, and further maintain the fairness of competition and parity between Washington state-chartered banks and national banks.

(7) Since RCW 30.04.111 does not define "loans and extensions of credit" and the words "extensions of credit" are not specified, the director of banks herein exercises the director of bank's broad administrative authority under RCW 30.04.030 and looks to applicable federal banking law and regulation for clarification of the term "extensions of credit," in keeping with well-settled principles of statutory construction. Accordingly, in promulgating and adopting the definition of "loans and extensions of credit" set forth in this chapter, the director of banks is herein guided by the restrictions on insider lending set forth in Federal Reserve Board Regulation O, at 12 C.F.R. Sec. 215.3, to the extent that (a) "extension of credit" has been therein broadly defined by the Fed-

eral Reserve Board to include "an extension of credit in any manner whatsoever" and (b) on account of Regulation O having been adopted by the Federal Reserve Board based on comparable principles of safety and soundness in regard to banks.

(8) The director of banks finds and determines that certain powers and authorities of an out-of-state state-chartered bank with a branch or branches in Washington state, which affect the operations of banking and delivery of financial services in Washington state, and which provide certain exceptions to the general lending limit in emergency circumstances, ought to and will be deemed to be exceptions to the general lending limit under RCW 30.04.111, subject to the conditions set forth in this chapter.

(9) These rules and regulations are intended to:

(a) Prevent one person, or a relatively small group of persons who directly benefit from each other or who are engaged in a common enterprise, from borrowing or otherwise obtaining an unduly large amount of a bank's funds or other extension of credit;

(b) Safeguard a bank's depositors by establishing and maintaining standards that promote spreading of a bank's loans and extensions of credit among a relatively large number of persons engaged in different lines of business; and

(c) Prescribe standards of safety and soundness with respect to the credit exposure of a bank to its investment in derivative transactions, and to the extent required by the board of governors of the Federal Reserve System and the Federal Deposit Insurance Corporation for state member banks and state insured banks, respectively, to the credit exposure of a bank to its investment in repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions.

(10) These rules include, without limitation, provisions for:

(a) Defining or further defining or clarifying terms used in RCW 30.04.111;

(b) Establishing limits or requirements other than those specified in RCW 30.04.111 for particular classes or categories of loans and extensions of credit;

(c) Determining when a loan or extension of credit putatively made to a person shall, for purposes of this section, be attributed to another person;

(d) Setting standards for computation of time in relation to determining limits on loans and extensions of credit; and

(e) Implementing and incorporating other changes in limits on loans and extensions of credit necessary to conform to federal statute and rule required or otherwise authorized by RCW 30.04.111.

NEW SECTION

WAC 208-512A-005 "Loans and extensions of credit" and "contractual commitment to advance funds"—Defined. (1) "Loan or extension of credit" generally includes:

(a) Any direct or indirect advance of funds to a person made on a basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person;

(b) Any credit exposure of a bank arising from a derivative transaction or a securities financing transaction, but only to the extent that a securities financing transaction is required, by the Federal Reserve Board or the FDIC, with respect to state member banks and state insured banks, respectively, to be treated as a loan or extension of credit for purposes of RCW 30.04.111 and this chapter; and

(c) Any contractual commitment to advance funds, and includes a renewal, modification, or extension of the maturity date of a loan or extension of credit.

(2) Notwithstanding any other provision of this section, a "loan or extension of credit" excludes the following:

(a) Special exceptions, conditions and limitations to the general lending limit to the extent set forth in WAC 208-512A-020 through 208-512A-090, inclusive;

(b) A renewal, extension or restructuring of an existing loan, with interest paid current and no further advance of funds, by a bank under the direction and control of a conservator appointed by the director;

(c) A renewal or restructuring of a loan as a new loan or extension of credit, following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except as permitted by WAC 208-512A-015), or a new borrower replaces the original borrower, or unless the division determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;

(d) Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

(e) Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(f) Financed sales of a bank's own assets, including other real estate owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;

(g) Amounts paid against uncollected funds in the normal process of collection;

(h) Credit exposures arising from securities financing transactions in which the securities financed are Type I securities, or securities listed in section 5 (c)(1)(C), (D), (E), and (F) of the Home Owners Loan Act and general obligations of a state or subdivision as listed in section 5 (c)(1)(H) of the Home Owners Loan Act, at 12 U.S.C. Sec. 1464 (c)(1)(C), (D), (E), (F), and (H);

(i) Intraday credit exposures arising from a derivative transaction or securities financing transaction; and

(j) That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement pro-

vides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event. When an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming subject to WAC 208-512A-012, rather than a violation, if:

(i) The originating bank had a valid and unconditional participation agreement with a participant or participants that was sufficient to reduce the loan to within the originating bank's lending limit;

(ii) The participant reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation; and

(iii) The participation was to be funded by close of business of the originating national bank's next business day.

As used in this chapter and to the extent used in RCW 30.04.111, the term "loans and extensions of credit," unless otherwise indicated, shall have the meaning set forth in this section. As used in RCW 30.04.111 and this chapter, the terms "loan," "loans," "extension of credit," "extensions of credit," and "loan or extension of credit" refer, as applicable, to the singular or plural of "loans and extensions of credit."

(3) **"Contractual commitment to advance funds"** generally means a bank's obligation to advance funds under a legally binding contractual commitment to make a loan or extension of credit.

(a) For purposes of this chapter and calculation of the general lending limit, "contractual commitment to advance funds" includes:

(i) A bank's obligation to make payment (directly or indirectly) to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer's contract with the third person, or to make payments upon some other stated condition;

(ii) A bank's obligation to guarantee or act as surety for the benefit of a person; and

(iii) A bank's obligation to advance funds under a standby letter of credit, a put, or other similar arrangement.

(b) For purposes of this chapter and calculation of the general lending limit, "contractual commitment to advance funds" does not include:

(i) The undisbursed portion of any loan or extension of credit;

(ii) The entire amount of any such commitment that has not yet been drawn upon; and

(iii) Letters of credit and similar instrument:

(A) Which do not guarantee payment;

(B) Which do not provide for payment in the event of a default of a third party; and

(C) In which the issuing bank expects the beneficiary to draw on the issuer.

NEW SECTION

WAC 208-512A-007 Other general chapter definitions. As used in this chapter and to the extent used in RCW 30.04.111, the following additional terms, unless otherwise indicated, mean:

(1) **"ALLL"** means a bank's allowance for loan and lease losses.

(2) **"Bank"** includes a commercial bank chartered and regulated under Title 30 RCW and, to the extent applicable to this chapter pursuant to WAC 208-512A-009, a mutual or stock savings bank chartered and regulated under Title 32 RCW.

(3) **"Borrower"** means:

(a) A person who is named as a borrower or debtor in a loan or extension of credit;

(b) A person to whom a bank has credit exposure arising from a derivative transaction or a securities financing transaction, entered by the bank; or

(c) Any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the "direct benefit" or the "common enterprise" tests set forth in WAC 208-512A-100.

(4) **"Call report"** means a bank's Consolidated Report of Condition and Income.

(5) **"Capital and surplus"** means:

(a) A bank's Tier 1 and Tier 2 capital as reported in a bank's call report; plus

(b) The balance of a bank's ALLL not included in the bank's Tier 2 capital as reported in the bank's call report.

(6) **"Close of business"** means the time at which a bank closes its accounting records for the business day.

(7) **"Control"** is presumed to exist when a person directly or indirectly, or acting through or together with one or more persons:

(a) Owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(c) Has the power to exercise a controlling influence over the management or policies of another person.

(8) **"Credit derivative"** has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(9) **"Current market value"** means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(10) **"Derivative transaction"** includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(11) **"Director of banks"** means the director of the division of banks of the department of financial institutions.

(12) **"Division"** means the division of banks of the department of financial institutions.

(13) **"Effective margining arrangement"** means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds one million United States dollars created by the derivative transactions covered by the agreement.

(14) **"Eligible credit derivative"** means a single-name credit derivative or a standard, nontranched index credit derivative provided that:

(a) The derivative contract meets the requirements of an eligible guarantee, as defined in 12 C.F.R. Part 3, Appendix C, and has been confirmed by the protection purchaser and the protection provider;

(b) Any assignment of the derivative contract has been confirmed by all relevant parties;

(c) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(d) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(e) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(f) If the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(g) If the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(15) **"Eligible guarantee"** means a guarantee that:

(a) Is written and unconditional;

(b) Covers all or a pro rata portion of all contractual payments of the obligor on the reference exposure;

(c) Gives the beneficiary a direct claim against the protection provider;

(d) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(e) Is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(f) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(g) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure; and

(h) Is not provided by an affiliate of the bank, unless the affiliate is an insured depository institution, bank, securities broker or dealer, or insurance company that:

(i) Does not control the bank; and

(ii) Is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies (as the case may be).

(16) **"Eligible protection provider"** means:

(a) A sovereign entity (a central government, including the U.S. government, an agency, department, ministry, or central bank);

(b) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(c) A federal home loan bank;

(d) The Federal Agricultural Mortgage Corporation;

(e) A depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(f) A bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 U.S.C. 1841;

(g) A savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act, at 12 U.S.C. 1467a;

(h) A securities broker or dealer registered with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. 78o et seq.;

(i) An insurance company that is subject to the supervision of the Washington state office of insurance commissioner;

(j) A foreign banking organization;

(k) A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and

(l) A qualifying central counterparty.

(17) **"FDIC"** means the Federal Deposit Insurance Corporation.

(18) **"Federal Reserve Board"** means the board of governors of the Federal Reserve System.

(19) **"Financial instrument"** means stocks, notes, bonds, and debentures traded on a national securities exchange, over-the-counter (OTC) margin stocks as defined in Regulation U, 12 C.F.R. Part 221, commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type that

issue shares in which national banks or savings associations may perfect a security interest. Financial instruments may be denominated in foreign currencies that are freely convertible to U.S. dollars. The term "financial instrument" does not include mortgages.

(20) "**OCC**" means the Office of the Comptroller of the Currency.

(21) "**Person**" means: An individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; limited liability company; limited liability partnership; not-for-profit corporation; sovereign government or agency, instrumentality, or political subdivision thereof; or any similar entity or organization.

(22) "**Qualifying central counterparty**" has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(23) "**Qualifying master netting agreement**" has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(24) "**Readily marketable collateral**" means financial instruments and bullion which are saleable under ordinary circumstances with reasonable promptness at a fair market value determined by daily quotations based on actual transactions on an auction or a similarly available daily bid and ask price market.

(25) "**Readily marketable staple**" means an article of commerce, agriculture, or industry, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper and lead, in the form of standardized interchangeable units, that is easy to sell in a market with sufficiently frequent price quotations. An article comes within this definition if the exact price is easy to determine and the staple itself is easy to sell at any time at a price that would not be considerably less than the amount at which it is valued as collateral. Whether an article qualifies as a readily marketable staple is determined on the basis of the conditions existing at the time the loan or extension of credit that is secured by the staples is made.

(26) "**Securities financing transaction**" means a repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.

(27) "**State insured bank**" denotes a bank, as defined in this chapter, which is an "insured depository institution" as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

(28) "**State member bank**" denotes a bank, as defined in this chapter, which is a member of a federal reserve bank as authorized under section 9 of the Federal Reserve Act (12 U.S.C. Sec. 321) and, for purposes of this chapter, has the same meaning as that term is defined in section 3(d) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(d)).

(29) "**Subsidiary**" means:

(a) Any company twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such person, or is held by it with power to vote;

(b) Any company the election of a majority of whose directors is controlled in any manner by such person; or

(c) Any company with respect to the management or policies of which such person has power, directly or indirectly,

to exercise a controlling influence, as determined by the division, after notice and opportunity for hearing.

(30) "**Type I securities**" has the same meaning as set forth in 12 C.F.R. Sec. 1.2(j) and includes:

(a) Obligations of the United States;

(b) Obligations issued, insured, or guaranteed by a department or an agency of the United States government, if the obligation, insurance, or guarantee commits the full faith and credit of the United States for the repayment of the obligation;

(c) Obligations issued by a department or agency of the United States, or an agency or political subdivision of a state of the United States, that represent an interest in a loan or a pool of loans made to third parties, if the full faith and credit of the United States has been validly pledged for the full and timely payment of interest on, and principal of, the loans in the event of nonpayment by the third-party obligor(s);

(d) General obligations of a state of the United States or any political subdivision thereof; and

(e) Municipal bonds if the bank is well capitalized as defined as that term is used in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1831o (b)(1).

NEW SECTION

WAC 208-512A-009 Applicability of chapter. This chapter is applicable, notwithstanding any other provision thereof, only to:

(1) A commercial bank under Title 30 RCW;

(2) A mutual or stock savings bank under Title 32 RCW, which, on January 21, 2013, or thereafter, invests in derivative transactions;

(3) A mutual or stock savings bank under Title 32 RCW, which, on January 21, 2013, or thereafter, invests in securities financing transactions, if:

(a) The mutual or stock savings bank is a state member bank and the Federal Reserve Board has determined that loans and extensions of credit apply to securities financing transactions; or

(b) The FDIC has determined that loans and extensions of credit apply to securities financing transactions in relation to state-chartered banks and savings banks; and

(4) A mutual or stock savings bank under Title 32 RCW that has notified the division, as of January 21, 2013, or thereafter, that it has elected to be regulated by and comply with this chapter, even if it does not invest in derivative transactions or securities financing transactions.

NEW SECTION

WAC 208-512A-010 General limitation on loans and extensions of credit. The total amount of loans and extensions of credit by a bank to a person outstanding at one time and not fully secured by collateral in a manner set forth in WAC 208-512A-011, shall not exceed twenty percent of the capital and surplus of such bank; provided, that a bank shall not be deemed to have violated this section on account of any loan or extension of credit, if such loan or extension of credit would be classified as an exception to the lending limit for national banks or federal savings associations under applicable federal banking laws and rules that existed as of July 28,

1985, or as of any subsequent date not later than July 27, 2003.

NEW SECTION

WAC 208-512A-011 Exception to general limitation—Loans and extensions of credit fully secured by readily marketable collateral. (1) A loan or extension of credit by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, shall not be subject to any limitations based on capital and surplus.

(2) Notwithstanding subsection (1) of this section, if the total of such loans and extensions of credit, together with loans made under general limitations pursuant to WAC 208-512A-010 exceed forty-five percent of capital and surplus, the division will review the credits as a possible concentration, with regard to both risk diversification within the bank's asset structure and diversification or other risk in the marketable collateral securing the loan. This limitation shall be separate and in addition to the general twenty percent limitation set forth in WAC 208-512A-010.

(3) Each loan or extension of credit based on the foregoing limitation shall be secured by readily marketable collateral having a current market value of at least one hundred fifteen percent of the amount of the loan or extension of credit at all times.

(4) Financial instruments may be denominated in foreign currencies which are freely convertible to United States dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the bank's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

(5) Each bank must institute adequate procedures to ensure that the collateral value fully secures the outstanding loan at all times. If collateral values fall below one hundred fifteen percent of the outstanding loan, to the extent that the loan is no longer in conformance with this section and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking action.

NEW SECTION

WAC 208-512A-012 Exception to general limitation—Nonconforming loans. (1) A loan or extension of credit that was within the limit on loans and extensions of credit when made, will not be deemed a violation of the legal lending limit and will be treated as "nonconforming" if the loan or extension of credit is no longer in conformity with the bank's limit on loans and extensions of credit because:

(a) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the limit on loans and extensions of credit or capital rules have changed; or

(b) Collateral securing the loan or extension of credit, in order to satisfy the requirements of an exception to the limit, has declined in value; or

(c) In the case of an extension of credit arising from a derivative transaction (or, if required by the FDIC or Federal Reserve Board, a securities financing transaction), and measured by the internal model method described in WAC 208-512A-300, the extension of credit subject to the lending limit increases after execution of the transaction.

(2) A bank must use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of subsection (1)(a) of this section into conformity with the bank's limit on loans and extensions of credit unless to do so would be inconsistent with safe and sound banking practices.

(3) A bank must bring a loan or extension of credit that is nonconforming as a result of circumstances described in subsection (1)(b) of this section into conformity with the bank's limit on loans and extensions of credit within thirty calendar days, except when judicial proceedings, regulatory actions, or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

(4) Notwithstanding any provision of this section, the director of banks may by interpretation and policy statement prescribe standards for treatment of nonconforming extensions of credit that are derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions, and may, if required for state insured banks or state member banks, rely upon rules or interpretations of the FDIC or the Federal Reserve Board, as applicable.

NEW SECTION

WAC 208-512A-013 Exception to general limitation—Declining capital—Inability to otherwise effectively operate in marketplace—Director discretion. Notwithstanding any provision of this chapter to the contrary, in the event that a bank's capital declines sufficiently to seriously impair the bank's ability to effectively operate in its marketplace or serve the needs of its customers or the community in which it is located, the director of banks may, upon written application and in the exercise of his or her discretion, grant a bank temporary permission to fund loans and extensions of credit in excess of such bank's limit on loans and extensions of credit. In the exercise of discretion, the director of banks may further specify conditions for granting such emergency exception and may limit emergency lending authority to particular types or classes of loans and extensions of credit.

NEW SECTION

WAC 208-512A-014 Exception to general limitation—Extenuating facts and circumstances—Standards for division determination—Director of banks' discretion. (1) Notwithstanding any provision of this chapter to the contrary, the director of banks, in his or her discretion, may grant an exception to the limit on loans and extensions of credit based on extenuating facts and circumstances.

(2) In deciding whether to grant an exception under this section, the director of banks shall consider:

(a) The proposed transaction for which the exception is sought;

(b) How the requested exception would affect the capital adequacy and safety and soundness of the requesting bank if the exception is not granted or, if the exception is granted, if the proposed borrower should ultimately default;

(c) How the requested exception would affect the loan portfolio diversification of the requesting bank;

(d) The competency of the bank's management to handle the proposed transaction and any resulting safety and soundness issues;

(e) The marketability and value of the proposed collateral (if any); and

(f) The extenuating facts and circumstances that warrant an exception in light of the purpose of the limit on loans and extensions of credit set forth in RCW 30.04.111 and this chapter.

NEW SECTION

WAC 208-512A-015 Renewals and additional advances under a contractual commitment to advance funds—Project funding. (1) A bank may renew a contractual commitment to advance funds and complete funding under that commitment if all of the following criteria are met:

(a) The completion of funding is consistent with safe and sound banking practices and is made to protect the position of the bank;

(b) The completion of funding will enable the borrower to complete a project for which the contractual commitment to advance funds was made;

(c) The amount of the additional funding does not exceed the unfunded portion of the bank's contractual commitment to advance funds; and

(d) Such contractual commitment to advance funds, when combined with all other outstanding loans and contractual commitments to advance funds to a borrower, was within the bank's lending limit when entered into, calculated pursuant to WAC 208-512A-200.

(2) In determining whether a contractual commitment to advance funds is within the bank's lending limit when made, the bank may deduct from the amount of the commitment the amount of any legally binding loan participation commitments that are issued concurrent with the bank's commitment and that would be excluded from the definition of loan or extension of credit.

NEW SECTION

WAC 208-512A-020 Special rule—Discount of commercial or business paper. A loan or extension of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse is excluded from the calculation of the general lending limit, subject to the following terms and conditions:

(1) This exclusion applies to negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in the fabrication of a product, or to be used for any other business purposes which may reasonably be expected to provide funds for payment of the paper; and

(2) Loans or extensions of credit arising from the discount of paper must bear the full recourse endorsement of the owner; provided, however, that:

(a) Loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by such owner without recourse or with limited recourse, or may be accompanied by a separate agreement for limited recourse; and

(b) If transferred without full recourse, the paper must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper.

NEW SECTION

WAC 208-512A-030 Special rule—Purchase of bankers' acceptances. The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and which are issued by other depository institutions, is excluded from the calculation of the general lending limit, subject to the following terms and conditions:

(1) Acceptances by a bank of time drafts which do not meet the requirements for discount with a Federal Reserve Bank, are subject to the general twenty percent limitation of WAC 208-512A-010; and

(2) During any period within which a bank holds its own acceptances, eligible or ineligible, having given value therefor, the amount given is considered to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to appropriate limitations.

NEW SECTION

WAC 208-512A-040 Special rule—Readily marketable staples. (1) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus, in addition to the general limit set forth in WAC 208-512A-010, if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit.

(2) The following additional terms and conditions shall apply to a loan or extension of credit secured by staples:

(a) The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(b) For purposes of such a transaction, "capital and surplus" shall be calculated at thirty-five percent in addition to the general twenty percent limitation.

(c) A "readily marketable staple" means an article of commerce, agriculture, or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to make (i) the price easily and definitely ascertainable, and (ii) the staple itself easy to realize upon sale at any time at a price which would not involve any

considerable sacrifice from the amount at which it is valued as collateral.

(d) Staples eligible for this exception must be nonperishable, may be refrigerated or frozen.

(e) This exception is intended to apply primarily to basic commodities, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, lead, and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies at one time may cease to qualify at a later date.

(f) Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable staples.

(g) Since commodities sometimes fail to qualify as nonperishable because of the manner in which they are handled or stored during the life of the loan or extension of credit, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

(h) This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for (i) not more than ten months if secured by nonperishable staples, and (ii) not more than six months if secured by refrigerated or frozen staples.

(i) The important characteristic of warehouse receipts, order bills of lading, or other similar documents is that the holder of such documents has control of the commodity and can obtain immediate possession. (However, the existence of brief notice periods, or similar procedural requirements under state law, for the disposal of the collateral will not affect the eligibility of the instruments for this exception.) Only documents with these characteristics are eligible security for loans under this exception. In the event of default on a loan secured by one of these documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself without extended litigation. Generally, documents qualifying as "documents of title" under the Uniform Commercial Code are "similar documents" qualifying for this exception.

(j) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is maintained on the commodity owner's premises.

(k) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with a registrar whose consent is required before the commodities can be withdrawn from the warehouse.

NEW SECTION

WAC 208-512A-050 Special rule—U.S. bonds, notes, certificates of indebtedness, or treasury bills, etc. Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations wholly guaranteed as to principal and inter-

est by the United States are excluded from the calculation of the general lending limit in WAC 208-512A-010, subject to the following terms and conditions:

(1) This exception applies only to loans or extensions of credit which are fully secured by the current market value of obligations of the United States or guaranteed by the United States.

(2) If the market value of the collateral declines so that the loan is no longer in conformance with this exception and exceeds the general lending limit set forth in WAC 208-512A-010, the loan must be brought into conformance within five business days.

(3) Securities issued by any department, agency, bureau, board, commission or establishment of the United States, or any corporation wholly owned, directly or indirectly, shall not be considered eligible collateral for purposes of this subsection (3), unless such securities shall be direct obligation of or fully guaranteed as to principal and interest by the United States.

NEW SECTION

WAC 208-512A-060 Special rule—Unconditional takeout commitments or guarantees of federal government. Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall be excluded from the calculation of the general lending limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) This exclusion will apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(2) For purposes of this exclusion, the commitment or guarantee must be payable in cash or its equivalent within sixty days after demand for payment is made.

(3) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

NEW SECTION

WAC 208-512A-070 Special rule—Segregated deposit account in lender bank. Loans or extensions of credit secured by a segregated deposit account in the lending bank are excluded from the calculation of the general lending limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(2) The bank must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(3) A deposit which is denominated and payable in a currency other than that of the loan or extension of credit which it secures may be eligible for this exception if it is freely convertible to United States dollars. The deposit must be revalued at least monthly, using appropriate foreign exchange rates, to ensure that the loan or extension of credit remains fully secured. This exception applies to only that portion of the loan or extension of credit that is covered by the United States dollar value of the deposit. If the United States dollar value of the deposit falls to the extent that the loan is in non-conformance with this exception and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking such action. This exception is not authority for a bank to take deposits denominated in foreign currencies.

NEW SECTION

WAC 208-512A-080 Special rule—Sale of bank's assets—Unpaid portion of purchase price. The unpaid portion of the purchase price of a sale of a bank's asset or assets, if secured by such asset or assets, shall be excluded from the calculation of the general lending limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) Any sale of a bank's asset or assets, resulting in an unpaid purchase price exceeding the bank's lending limit must be approved in advance of the sale by the board of directors, including the terms of payment of such unpaid purchase price, and if the purchase is by a director, officer or employee of the bank, shall conform to RCW 30.12.050 and the Federal Reserve Board's Regulation O, at 12 C.F.R. Sec. 215.3.

(2) The bank must ensure that a security interest has been perfected in the collateral, including execution and recording or filing of documents and any other action required by state law.

NEW SECTION

WAC 208-512A-090 Special rule—Discount of negotiable or nonnegotiable installment consumer paper. (1) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject to a maximum limitation equal to twenty per centum of capital and surplus.

(2) If a bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of

this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(3) This exception allows a bank to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to twenty per centum of its capital and surplus if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(4) For purposes of this section:

(a) "Consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale; and

(b) "Consumer paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(5) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) an officer designated by the bank's chairman or chief executive officer pursuant to authorization by the board of directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(6) If a loan under this subsection is in default and the dealer or seller of the loan has contractually committed to repurchase the paper, then the loan will be aggregated with the dealer or seller's other outstanding debt for lending limit purposes and will be subject to the twenty per centum limitation.

(7) If loan payments are received and/or controlled by the dealer or seller of the paper and remitted to the bank, then those loans will be aggregated with the dealer or seller's other outstanding debt for lending limit purposes and will be subject to the twenty per centum limitation.

NEW SECTION

WAC 208-512A-100 Combining loans and extensions of credit made to separate persons—Generally. (1) Loans or extensions of credit to one person will be attributed to another person or persons when:

(a) The proceeds of the loans or extensions of credit are intended for or are used for the direct benefit of the other person or persons; or

(b) A "common enterprise" exists between the persons.

(2) The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the "direct benefit" of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction, where the proceeds are used to acquire property, goods, or services.

(3) Determination of whether a "common enterprise" exists depends upon a realistic evaluation of the facts and circumstances of the applicable transactions. A "common enterprise" exists when:

(a) The expected source of repayment for each of the multiple loans or extensions of credit is the same for each person; or

(b) Separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own or control more than fifty percent of the voting securities; or

(c) The loans or extensions of credit are made to persons who are related by common control and (i) are engaged in interdependent business or (ii) there is substantial financial interdependence among them; or

(d) The division determines, based upon a reasonable evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(4) "Substantial financial interdependence" occurs when fifty percent or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control (gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments).

(5) Throughout this section, the term "control" is presumed to exist when one or more persons acting in concert, directly or indirectly:

(a) Own, control, or have power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Exercise a controlling influence over the management or policies of another person; or

(c) Control in any manner the election of a majority of the directors, trustees or other persons exercising similar functions of another person. "Common control" includes control of one person by another person.

NEW SECTION

WAC 208-512A-110 Loans to partnerships, joint ventures, and associations. (1) Loans or extensions of credit to a partnership, joint venture, or association shall, for purposes of this chapter, be considered loans or extensions of credit to each member of such partnership, joint venture, or association.

(2) Loans or extensions of credit to members of a partnership, joint venture, or association shall be considered loans or extensions of credit to the partnership, joint venture,

or association if one or more of the tests set forth in WAC 208-512A-100 is satisfied with respect to one or more of the members. However, loans to members of a partnership, joint venture, or association will not be attributed to other members of the partnership, joint venture, or association unless one or more of the tests set forth in WAC 208-512A-100 is satisfied with respect to such other members. The tests set forth in WAC 208-512A-100 shall be deemed satisfied when loans or extensions of credit are made to members of a partnership, joint venture, or association for the purpose of purchasing an interest in such partnership, joint venture, or association.

(3) The rule set forth in subsection (1) of this section is not applicable to limited partners in limited partnerships or to members of joint ventures if such partners or members, by the terms of the partnership or membership agreement, are not to be held liable for the debts or actions of the partnership, joint venture, or association. However, the rules set forth in WAC 208-512A-100 are applicable to such partners or members.

NEW SECTION

WAC 208-512A-120 Loans to limited liability companies. Loans or extensions of credit to a limited liability company shall, for purposes of this chapter, be considered loans or extensions of credit to a corporation, and shall not be subject to the provisions of WAC 208-512A-110.

NEW SECTION

WAC 208-512A-130 Loans to subsidiaries and corporate groups. (1) Loans or extensions of credit to a person and its subsidiaries or to subsidiaries of one person will not be combined where the person and its subsidiaries are not engaged in a "common enterprise" as defined in WAC 208-512A-100(2).

(2) If members of a corporate group (a person and all its subsidiaries) are either:

(a) "Substantially financially interdependent," as defined in WAC 208-512A-100(3); or

(b) Engaged in "common enterprise," as defined in WAC 208-512A-100(2), then the total amount of loans or extensions of credit to these persons must be attributed to each of the other persons in the corporate group.

Conversely, if members of a corporate group are neither substantially financially interdependent nor engaged in "common enterprise," then the loans to different members are separately subject to a twenty percent limitation. In no event may the total amount of loans or extensions of credit by a state bank to a corporate group exceed fifty percent of the bank's capital and surplus.

(3) For purposes of this section, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns, directly or indirectly, more than fifty percent of the voting securities or voting interests of the corporation or limited liability company.

NEW SECTION

WAC 208-512A-200 Computation of time—Calculation date of lending limits. (1) For purposes of determining compliance with RCW 30.04.111 and this chapter, a bank shall determine its lending limit as of the most recent of the following dates:

- (a) The last day of the preceding calendar quarter; or
- (b) The date on which there is a change in the bank's capital category for purposes of the Federal Deposit Insurance Act, at 12 U.S.C. 1831o (b)(1).

(2) A bank's lending limit calculated in accordance with subsection (1)(a) of this section will be effective as of the earlier of the following dates:

- (a) The date on which the bank's call report is submitted; or
- (b) The date on which the bank's call report is required to be submitted.

(3) A bank's lending limit calculated in accordance with subsection (1)(b) of this section will be effective on the date that the limit is to be calculated.

(4) If the division determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by subsection (1) of this section, the division may provide written notice to the bank directing it to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice.

NEW SECTION

WAC 208-512A-300 Credit exposure arising from derivative and securities financing transactions. (1) This section sets forth the rules for calculating the credit exposure arising from a derivative transaction entered into by a bank for purposes of determining the bank's lending limit pursuant to RCW 30.04.111 and this chapter.

(2) Subject to the direction of the division, a bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by means of:

- (a) The internal model method;
 - (b) The conversion factor matrix method; or
 - (c) The remaining maturity method.
- (3) Except as otherwise required by the division, a bank shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.

(4) The division may require a bank to use the internal model method, the conversion factor matrix method, or the remaining maturity method to calculate the credit exposure of derivative transactions if it finds that such method is necessary to promote the safety and soundness of the bank.

(5) The requirements for using the internal model method are as follows:

(a) The credit exposure of a derivative transaction under the internal model method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

(b) A bank shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-

market value is zero or negative, than the current credit exposure is zero.

(c) A bank may not use the internal model method in its calculation of potential credit exposure to a derivative transaction unless the bank obtains prior approval of the division or unless it is already using the internal model method, as of January 21, 2013, and the division thereafter determines that the bank's internal model method is safe and sound and that bank's management is competent to administer its derivative investment program using such internal model method.

(d) A bank that calculates its credit exposure by using the internal model method may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

(6) The credit exposure arising from a derivative transaction under the conversion factor matrix method shall equal and remain fixed at the potential future credit exposure of the derivative transaction as determined at the execution of the transaction by reference to Table 1 below.

Table 1 - Conversion Factor Matrix for Calculating Potential Future Credit Exposure¹

Original Maturity ²	Interest Rate	Foreign Exchange Rate and Gold	Equity	Other ³ (includes commodities and precious metals except gold)
1 year or less	0.015	0.015	0.20	0.06
Over 1 to 3 years	0.030	0.030	0.20	0.18
Over 3 to 5 years	0.060	0.060	0.20	0.30
Over 5 to 10 years	0.120	0.120	0.20	0.60
Over ten years	0.300	0.300	0.20	1.00

¹ For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

² For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

³ Transactions not explicitly covered by any other column in Table 1 are to be treated as "Other."

(7) The credit exposure arising from a derivative transaction under the remaining maturity method shall equal the greater of zero or the sum of the current mark-to-market value of the derivative transaction added to the product of the notional amount of the transaction, the remaining maturity in years of the transaction, and a fixed multiplicative factor determined by reference to Table 2 below.

Table 2 - Remaining Maturity Factor for Calculating Credit Exposure

	Interest Rate	Foreign Exchange Rate and Gold	Equity	Other ¹ (includes commodities and precious metals except gold)
Multiplicative Factor	1.5%	1.5%	6%	6%

¹Transactions not explicitly covered by any other column in Table 2 are to be treated as "Other."

(8) Notwithstanding any other provision of this section, a bank that uses the conversion factor matrix method or remaining maturity method, or that uses the internal model method without entering an effective margining arrangement, shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

(9) A bank shall calculate the credit exposure to a reference entity arising from credit derivatives entered by the bank by adding the notional value of all protection sold on the reference entity. However, the bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

NEW SECTION

WAC 208-512A-310 Securities financing transactions. (1) Only to the extent required by the FDIC, a bank that is a state insured bank shall comply with all rules governing limits on extensions of credit related to a state insured bank's credit exposure to securities financing transactions.

(2) Only to the extent required by the Federal Reserve Board, a bank that is a state member bank shall comply with all rules governing limits on extensions of credit related to a state member bank's credit exposure to securities financing transactions.

NEW SECTION

WAC 208-512A-320 Policies and procedures related to derivative transactions, etc. To fulfill the requirements of section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1828(y), and the requirements (if any) of the FDIC and the Federal Reserve Board in relation to securities financing transactions by state insured banks and state member banks, respectively, the division may publish and implement policies and procedures, consistent with RCW 30.04.111 and this chapter, related to examination for and supervision and enforcement of WAC 208-512A-300 and 208-512A-310.

NEW SECTION

WAC 208-512A-400 Effect of OCC rules, interpretations and opinions as guidance. Where RCW 30.04.111 and

this chapter do not specifically address certain transactions involving loans and extensions of credit, the division may, as necessary, in its interpretations and supervision and enforcement of banks, be guided by applicable rules, interpretations, and opinions of the Office of the Comptroller of the Currency in the interest of a bank's safety and soundness, but only to the extent that such rules, interpretations, and opinions are compatible with the provisions of RCW 30.04.111 and this chapter.

NEW SECTION

WAC 208-512A-500 Loans and extensions of credit to insiders and their immediate family. No provision of Titles 30 and 32 RCW, chapter 208-512 WAC, or this chapter, shall limit the duty of a bank or a bank's affiliate, independent of any requirements of this chapter, to also comply with the provisions of Federal Reserve Board Regulation O, 12 C.F.R. Part 215, which relates to loans and extensions of credit to insiders of a bank or bank affiliate and their immediate family.

NEW SECTION

WAC 208-512A-600 Transitional rules. (1) Loans or extensions of credit that were in violation of RCW 30.04.111 prior to the relevant effective date of this chapter will be considered to remain in violation of law until they are paid in full, regardless of whether the loans or extensions of credit conform to the rules established in this chapter. Renewals or extensions of such loans or extensions of credit will also be considered violations of law.

(2) A bank that has outstanding loans or extensions of credit to a person in violation of RCW 30.04.111 as of the effective date of this chapter may make additional advances to such person after those dates if the additional advances are permitted under this chapter. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans or extensions of credit.

(3) Loans or extensions of credit which were in conformance with RCW 30.04.111 prior to the relevant effective date of this chapter but are not in conformance with the rules established in this chapter will not be considered to be violations of law during the existing contract terms of such loans or extensions of credit. Loans or extensions of credit which are not in conformance with this chapter for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.

(4) If a bank, prior to the effective date of this chapter, entered into a legally binding commitment to advance funds on or after such date, and such commitment was in conformance with RCW 30.04.111, advances under such commitment may be made notwithstanding the fact that such advances are not in conformance with this chapter. The bank must, however, demonstrate that the commitment represents a legal obligation to fund, either by a written agreement or through file documentation.

WSR 12-22-073
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 7, 2012, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-063.

Title of Rule and Other Identifying Information: The community services division is proposing to amend WAC 388-466-0120 Refugee cash assistance (RCA).

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on December 11, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 12, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 11, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 22, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-466-0120 to repeal refugee medical assistance (RMA) language from the RCA rule. The responsibility for RMA was transferred to the health care authority and rules were recodified under Title 182 WAC.

Reasons Supporting Proposal: The proposed amendments are necessary to conform to 2E2SHB 1738, Laws of 2011, which designates the health care authority as the single state agency responsible for the administration and supervision of Washington's medicaid program.

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

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kerry Judge-Kemp, 712 Pear Street S.E., Olympia, 98501, (360) 725-4630.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed changes do not have an economic impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328(5):

(b)(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party;

(b)(vii): "[t]his section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

November 1, 2012
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-19-037, filed 9/12/12, effective 10/13/12)

WAC 388-466-0120 Refugee cash assistance (RCA).

(1) Who can apply for refugee cash assistance (RCA)?

Anyone can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within thirty days.

(2) How do I know if I qualify for RCA?

You may be eligible for RCA if you meet all of the following conditions:

(a) You have resided in the United States for less than eight months;

(b) You meet the immigration status requirements of WAC 388-466-0005;

(c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;

(d) You meet the work and training requirements of WAC 388-466-0150; and

(e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

(3) What are the other reasons for not being eligible for RCA?

You may not be able to get RCA if you:

(a) Are eligible for temporary assistance for needy families (TANF) or supplemental security income (SSI); or

(b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or

(c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within thirty consecutive days immediately prior to your application for RCA; or

(d) Are a full-time student in a college or university.

(4) If I am an asylee, what date will be used as an entry date?

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

(5) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RCA?

You are eligible for RCA to the same extent as a refugee if you are:

(a) An adult victim, eighteen years of age or older, you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS), and you meet eligibility requirements in subsections (2)(c) and (d) of this section. You do not have to provide any other documentation

of your immigration status. Your entry date will be the date on your certification letter;

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirement;

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet the eligibility requirements in subsections (2)(c) and (d) of this section.

(6) Does getting a onetime cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

(7) What is the effective date of my eligibility for RCA?

The date DSHS has sufficient information to make eligibility decision is the date your RCA begins.

(8) When does my RCA end?

(a) Your RCA ends on the last day of the eighth month starting with the month of your arrival to the United States. Count the eight months from the first day of the month of your entry into the United States. For example, if you entered the United States on May 28, 2000, May is your first month and December 2000 is your last month of RCA.

(b) If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA. ~~((Your medical coverage may continue for up to eight months from your month of arrival in the United States (WAC 388-466-0130).))~~

(9) Are there other reasons why RCA may end?

Your RCA also ends if:

(a) You move out of Washington state;

(b) Your unearned income and/or resources go over the maximum limit (WAC 388-466-0140); or

(c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

(10) Will my spouse be eligible for RCA, if he/she arrives in the U.S. after me?

When your spouse arrives in the United States, DSHS determines his/her eligibility for RCA and/or other income assistance programs.

(a) Your spouse may be eligible for up to eight months of RCA based on his/her date of arrival into the United States.

(b) If you live together, you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA is determined based on you and your spouse's combined income and resources (WAC 388-466-0140).

(11) Can I get additional money in an emergency?

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

(12) What can I do if I disagree with a decision or action that has been taken by DSHS on my case?

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or an administrative hearing (WAC 388-02-0090). Your request must be made within ninety days of the date of the decision or action.

WSR 12-22-078

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed November 7, 2012, 10:54 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation II, Sections 2.01 (Definitions) and 2.06 (Bulk Gasoline Plants).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on December 20, 2012, at 8:45 a.m.

Date of Intended Adoption: December 20, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@psccleanair.org, fax (206) 343-7522, by December 19, 2012.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by December 13, 2012, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is proposing a regulation revision to eliminate the potential conflict between an EPA regulatory requirement and the practical technical feasibility of actually complying with that requirement.

The proposal would amend Sections 2.01 and 2.06 of Regulation II to establish an enforceable limitation on the daily gasoline throughput of bulk gasoline plants in order to clarify that the agency will regulate these facilities as bulk gasoline plants and not as gasoline loading terminals.

Reasons Supporting Proposal: The benefits are that the six bulk gasoline plants in the agency's jurisdiction can follow the requirements for bulk gasoline plants under the Gasoline Distribution Generally Available Control Technology (GACT) standard as we believe the EPA intended.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Gerry Pade, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4065; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

November 7, 2012
Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION II, SECTION 2.01 DEFINITIONS

When used in this Article:

(a) **GASOLINE** means any petroleum distillate or petroleum distillate/alcohol blend with a Reid vapor pressure of 4 pounds per square inch (27.6 kPa) or greater, which is used as a fuel for motor vehicles, marine vessels, or aircraft.

(b) **GASOLINE STATION** means any site that dispenses gasoline from stationary storage tanks into fuel tanks of motor vehicles, marine vessels, or aircraft.

(c) **PETROLEUM REFINERY** means a facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products by distilling crude oils or redistilling, cracking, extracting, or reforming unfinished petroleum derivatives. Not included are facilities re-refining used motor oils or waste chemicals, processing finished petroleum products, separating blended products, or air blowing asphalt.

(d) **SUBMERGED FILL LINE** means any discharge pipe or nozzle that meets either of the following conditions:

(1) Where the tank is filled from the top, the end of the discharge pipe or nozzle must be totally submerged when the liquid level is 6 inches (15 cm) from the bottom of the tank; or

(2) Where the tank is filled from the side, the discharge pipe or nozzle must be totally submerged when the liquid level is 18 inches (46 cm) from the bottom of the tank.

(e) **TRANSPORT TANK** means a container with a capacity greater than 264 gallons (1000 liters) used for shipping gasoline over roadways.

(f) **VAPOR RECOVERY SYSTEM** means a process that prevents the emission to the atmosphere of volatile organic compounds released by the operation of any transfer, storage, or process equipment.

(g) **BULK GASOLINE PLANT** means a gasoline storage and transfer facility that receives more than 90% of its annual gasoline throughput by transport tank, and reloads gasoline into transport tanks.

AMENDATORY SECTION

REGULATION II, SECTION 2.06 BULK GASOLINE PLANTS

(a) ~~((Section 2.06))~~ It shall be unlawful for any person to cause or allow the transfer of 20,000 gallons or more of gasoline at a gasoline bulk plant on any day.

(b) The following provisions in Sections 2.06(c) and 2.06(d) of this regulation shall apply to all bulk gasoline plants with an annual average daily gasoline throughput greater than 15,140 liters (4,000 gallons).

~~((b))~~ (c) It shall be unlawful for any person to cause or allow the transfer of gasoline from any transport tank into any stationary storage tank with a capacity greater than 3,785 liters (1,000 gallons) unless the following conditions are met:

(1) Such stationary storage tank is equipped with a permanent submerged fill pipe and "CARB-certified" vapor recovery system; and

(2) Such transport tank is equipped to balance vapors and is maintained in a leak-tight condition in accordance with Section 2.08 of Regulation II; and

(3) All vapor return lines are connected between the transport tank and the stationary storage tank, and the vapor recovery system is operating.

~~((c))~~ (d) It shall be unlawful for any person to cause or allow transfer of gasoline between a stationary storage tank and a transport tank except under the following conditions:

(1) All transport tanks shall be bottom loaded;

(2) The loading of all transport tanks, shall be performed such that 90% by volume of the gasoline vapors displaced during filling are prevented from being released into the ambient air;

(3) Such transport tanks shall be equipped to balance vapors; and

(4) All vapor return lines are connected between the transport tank and the stationary storage tank, and the vapor recovery system is operating.

WSR 12-22-079

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 7, 2012, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-140.

Title of Rule and Other Identifying Information: The department is proposing to revise WAC 16-228-1545 and 16-228-1546 to establish the soil fumigation category for private applicators (PA) seeking a certification option to label-mandated training on soil fumigants.

Hearing Location(s): Washington State Department of Agriculture (WSDA), Natural Resources Building (NRB), 1111 Washington Street S.E., Second Floor, Room 259, Olympia, WA 98504, on Wednesday, December 12, 2012, at 2:00 p.m.

Date of Intended Adoption: December 20, 2012.

Submit Written Comments to: Margaret Tucker, Program Manager, P.O. Box 42560, Olympia, WA 98504-2560, e-mail mtucker@agr.wa.gov, fax (360) 902-2093, by December 12, 2012.

Assistance for Persons with Disabilities: Contact agency receptionist at (360) 902-1976, by December 5, 2012, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal

would revise WAC 16-228-1546 to provide a certification option for PAs to label-mandated training prior to soil fumigant use. This training is a risk mitigation measure required by the Environmental Protection Agency (EPA) following a re-registration review. However, in lieu of training, EPA is allowing states to provide a certification option. PAs that add a new soil fumigation license category after passing an exam that addresses the new mitigation measures will be exempt from the label-mandated training. This certification option will remain valid as long as the licensee is in an active recertification cycle. WSDA is interested in providing this option to applicators that are unable to attend registrant-provided training or that prefer a certification option.

Reasons Supporting Proposal: Exam requirements, including categories necessary for Washington state pesticide licenses, are defined in the general pesticide rules (WAC 16-228-1545(3)). Except for the aquatic category, which is required when a farmer or their employee applies to water moving off the PA's property, PAs are not required to add categories to their license. While the soil fumigation category for PAs will be voluntary in lieu of the label-mandated training, it would be useful to amend the rule addressing PA licensing (WAC 16-228-1546) to provide this certification option. This would provide EPA with confirmation of the licensing option and provide a regulatory basis for PAs wishing to use a certification option to meet the new label requirements.

Statutory Authority for Adoption: RCW 17.21.030, 15.58.040, and chapter 34.05 RCW. Also 3ESBH [3ESHB] 2127.

Statute Being Implemented: RCW 17.21.030, 15.58.-040.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Margaret Tucker, 1111 Washington Street S.E., 2nd Floor, (360) 902-2015.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This provides a certification option for PAs to label-mandated training that will be required on soil fumigation labels beginning in December 2012. PAs are not required to add the soil fumigation category to their pesticide license but may do so if they choose in order to avoid the label-mandated training.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

October 31, 2012

Ted Maxwell

Acting Assistant Director

Pesticide Management Division

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1545 What are the pesticide licensing requirements? (1) All individuals licensed or required to be licensed as commercial pesticide applicators, commercial pesticide operators, private-commercial applicators, demon-

stration and research applicators, public operators, structural pest inspectors, pest control consultants and public pest control consultants must be certified, through examination, in all pest control classifications defined in subsection (3)(a) through ~~((h))~~ (i) of this section in which they operate, inspect or consult. Additionally, commercial pesticide applicators must be licensed in all classifications that the business operates. Licensed applicators may directly supervise unlicensed applicators only in those classifications in which they have a valid certification.

(2) To qualify for any pesticide license listed in subsection (1) of this section, applicants, except the structural pest inspector, must pass a "laws and safety" examination or equivalent, that includes, but is not limited to, the following: The state and federal laws governing pesticide use and the regulating agencies; general pesticide uses and application techniques; safe use of pesticides; general pesticide labeling comprehension; environmental fate of pesticides, and appropriate storage and disposal of pesticides and their containers. Individuals holding valid, passing scores on the private applicator or dealer manager exam are exempt from this examination requirement. Structural pest inspectors conducting complete wood destroying organism inspections must pass a "structural pest inspector laws and standards" examination or equivalent that includes, but is not limited to, the legal requirements governing structural pest inspectors and the standards for conducting complete wood destroying organism inspections.

(3) License classifications.

(a) Agricultural weed: The control of weeds, except with soil fumigants, in all agricultural crops including forest environments, and in former agricultural lands now in a noncrop status.

(b) Rights of way weed: The control of weeds, including cut stumps, on, but not limited to, terrestrial rights of way locations such as roads and/or highways, railroads, power lines and irrigation ditches and to industrial sites, including, but not limited to, airports, industrial parks, and large parking areas.

(c) Turf and ornamental weed: The control of weeds (and moss), including cut stumps, in ornamental and turf situations, which includes, but is not limited to, golf courses, parks, schools, lawns, yards, gardens, hospitals, vacant lots and open noncrop waste areas.

(d) Structural and turf demossing: The control of moss on structures and turf.

(e) Stump treatment: The use of herbicides on cut stumps to control resprouting.

(f) Soil fumigation: The use of soil-applied fumigants on agricultural crops and noncrop land to control pests including weeds, insects and diseases.

(g) Soil fumigation RMM: The use of soil fumigants to control pests including weeds, insects, and diseases. This category addresses risk mitigation measures on soil fumigant labels as a result of EPA's Reregistration Eligibility Decision process.

(h) Sewer root: Control of roots in sewer lines.

~~((h))~~ (i) Agricultural insect and disease: The control of insects and diseases, except with soil fumigants, in agricultural crops including forest environments.

~~((+))~~ (j) Ornamental insect and disease: The control of insects and diseases in ornamental, turf and rights of way situations including, but not limited to, golf courses, parks, schools, lawns, yards, gardens, greenhouses, hospitals and rest homes. This includes, but is not limited to, the use of insecticides, miticides, fungicides, bacteriocides, molluscides and nematocides.

~~((+))~~ (k) Interior plantscaping: The control of insects and diseases in interior plantscapes.

~~((+))~~ (l) PCO general: The control of insects, spiders, birds, rodents and animal pests in and around, but not limited to, the following situations: Residences, public buildings and grounds, commercial buildings and grounds, disposal sites, animal feed lots and farmsteads, including buildings and transportation equipment.

~~((+))~~ (m) PCO structural: The control of structurally destructive pests including, but not limited to, fungus, termites, carpenter ants, carpenter bees and wood-boring beetles. This classification allows a licensee to perform specific wood destroying organism inspections.

~~((+))~~ (n) Structural pest inspector: Allows for the commercial inspection of buildings for structurally destructive pests, their damage and conditions conducive to their development. This classification is required to perform complete wood destroying organism inspections.

~~((+))~~ (o) Stored grain: The use of pesticides (including fumigants and rodenticides) in grain storing facilities and railcars.

~~((+))~~ (p) Fumigant: The use of fumigants only (such as methyl bromide and aluminum phosphide) on stored commodities.

~~((+))~~ (q) Seed treatment: The application of pesticides to seeds to control destructive insects and diseases.

~~((+))~~ (r) Sprout inhibitor: Use of a pesticide to control sprouting in stored potatoes.

~~((+))~~ (s) Livestock pest: The control of external and internal pests of animals, with the exception of viruses~~(s)~~ including, but not limited to, beef cattle, dairy cattle, swine, sheep, horses, goats and poultry, and also treatment of livestock premises.

~~((+))~~ (t) Pest animal: The control of pest animals in agricultural situations.

~~((+))~~ (u) Aquatic: The control of aquatic pests in water areas including, but not limited to, canals, rivers, streams, lakes, ponds, marshes and pipe lines.

~~((+))~~ (v) Aquatic irrigation: Limited to the control of aquatic pests in irrigation district water delivery systems where the pesticide is applied directly into the water or enters the water due to the application of the pesticide. Pests include, but are not limited to, moss, algae, cattails, pond weeds and other emersed and submersed aquatic weeds.

~~((+))~~ (w) Public health: Application of pesticides by governmental employees and certain others in public health programs such as, but not limited to, mosquito control, rodent control and insect control in situations having medical and public health importance.

~~((+))~~ (x) Aquatic antifouling: Use of antifouling paints to control fouling organisms on marine vessels.

~~((+))~~ (y) Wood treatment: Use of wood preservatives for the control of wood damaging pests.

(4) All examinations required under this section shall be written and taken without the aid of any materials that contain information relevant to the exam content. Reading of exams by an individual other than the applicant is not permitted.

(5) A passing score of seventy percent is established for all the examinations required under this section. The department may establish separate passing scores for the examinations if a validated process is used. Passing scores are valid for obtaining a license in the calendar year in which the examination is taken plus the following calendar year.

(6) The department may waive any of the examination requirements contained in this section for any person holding a valid certification with similar classifications from an EPA or Canadian approved federal, state or provincial certification program with comparable examination and recertification standards.

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1546 What are the requirements for a private applicator license? (1) To qualify for a private applicator license, an individual must pass a private applicator examination. The examination shall be written and taken without the aid of any materials that contain information relevant to the exam content. Reading of exams by an individual other than the applicant is not permitted. Individuals holding valid, passing scores on the laws and safety examination, or equivalent, or the dealer manager exam, and one of the classifications in WAC 16-228-1545 (3)(a) or (h) or the now retired statewide classification, are exempt from this examination requirement.

(2) Private applicators making aquatic applications to water that moves off their own or their employer's agricultural land must obtain the aquatic classification described in WAC 16-228-1545 (3)(t). Private applicators applying soil fumigants may obtain the soil fumigation classification described in WAC 16-228-1545 (3)(g) as an option to meet label required active ingredient training.

(3) A passing score of seventy percent is established for the examinations required under this section. The department may establish separate passing scores for the examinations if a validated process is used. Passing scores are valid for obtaining a license in the calendar year in which the examination is taken plus the following calendar year.

(4) The department may waive the examination requirements contained in this section for any person holding a valid certification with similar classifications from an EPA or Canadian approved federal, state or provincial certification program with comparable examination and recertification standards.

WSR 12-22-080
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed November 7, 2012, 11:02 a.m.]

The Washington department of fish and wildlife (WDFW) is withdrawing the following WAC sections filed as part of WSR 12-19-091 on September 19, 2012: Amending WAC 232-28-248, 232-28-273, 232-28-337 and 232-28-342; and new sections WAC 232-28-622, 232-28-623, 232-28-624, and 232-28-625.

WDFW's wildlife program prefers to use the above-listed WAC sections as part of a rules project this spring. WDFW understands that there is inadequate time prior to the November 8-9, 2012, hearing announced in WSR 12-19-091 to inform the public that we are withdrawing the above-listed WAC sections from WSR 12-19-091, so we will still allow public testimony on the sections if anyone appears at the hearing to testify.

Joanna Eide
Administrative Regulations Analyst