

**WSR 13-11-001**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed May 1, 2013, 12:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-18-006.

Title of Rule and Other Identifying Information: WAC 170-295-1070 Minimum licensing requirements for child care centers.

Hearing Location(s): Department of Early Learning (DEL) State Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on June 25, 2013, at 12:00 p.m.

Date of Intended Adoption: No earlier than June 25, 2013.

Submit Written Comments to: Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, online at <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail [Rules@del.wa.gov](mailto:Rules@del.wa.gov), fax (360) 586-0533, by midnight on June 25, 2013.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by June 23, 2013, (360) 407-1971.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies requirements in WAC 170-295-1070 regarding state training and registry system (STARS) continuing education for child care center staff.

Reasons Supporting Proposal: The proposed rules clarify requirements regarding STARS continuing education for child care center staff.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070; chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Marci Hixson, DEL, Republic Building, P.O. Box 40970, Olympia, WA 98504, (360) 407-1971; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

May 2, 2013  
 Elizabeth M. Hyde  
 Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

**WAC 170-295-1070 What continuing state training and registry system (STARS) training is required for child care center staff?** (1) The director, program supervisor

and lead teachers must complete ten clock hours or one college credit of continuing education yearly after completing the initial training required in WAC 170-295-1010.

(2) The director and program supervisor must have five of the ten hours in program management and administration for the first two years in their respective positions. Each additional year, three of the ten hours required must be in program management and administration.

(3) ~~((Agencies or organizations that have been approved by the Washington state training and registry system (STARS) may offer up to six clock hours of continuing education each year to their employees. The remaining four hours must be obtained from other training offered in the community.))~~ The continuing education must be delivered by a state-approved trainer, or consist of training that has been department-approved through MERIT.

**WSR 13-11-018**

**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

(By the Code Reviser's Office)

[Filed May 7, 2013, 8:51 a.m.]

WAC 36-14-550, proposed by the department of licensing in WSR 12-21-122 appearing in issue 12-21 of the State Register, which was distributed on November 7, 2012, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 13-11-019**

**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed May 7, 2013, 9:43 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-224-0010, 246-224-0050, 246-224-0070, 246-224-0080 and 246-224-0090, Radioactive protection—Radiation machine assembly and registration. Clarifications to address the transfer of the master license service (MLS) program from the department of licensing (DOL) to the department of revenue (DOR).

Hearing Location(s): Department of Health (DOH), Town Center Two, Room 530, 111 Israel Road S.E., Tumwater, WA 98501, on June 25, 2013, at 10:00 a.m.

Date of Intended Adoption: July 1, 2013.

Submit Written Comments to: Michelle K. Austin, Rules Coordinator, P.O. Box 47827, Olympia, WA 98504-7827, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2266, by June 25, 2013.

Assistance for Persons with Disabilities: Contact Michelle K. Austin by June 17, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2011 legislative session, SHB 2017 (chapter 298, Laws of 2011) transferred the MLS program from DOL to DOR. The proposed revisions change references from DOL to DOR for the MLS program. For consistency with the statute, the proposed rules update name, address, and URL references in chapter 246-224 WAC.

Reasons Supporting Proposal: The proposed rules provide clarity to those who must comply with the rules by including the appropriate name, address, and URL information for the MLS program.

Statutory Authority for Adoption: RCW 70.98.050.

Statute Being Implemented: RCW 70.98.080 and chapter 19.02 RCW.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Michelle K. Austin, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3250; Implementation and Enforcement: Dan Ven Gent, 111 Israel Road S.E., Tumwater, WA 98501, (253) 395-6716.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(d), a small business economic impact statement is not required for proposed rules that only correct typographical errors, make address or name changes, or clarify the language of a rule without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

May 7, 2013

John Wiesman, DrPH, MPH

Secretary

**AMENDATORY SECTION** (Amending WSR 08-09-079, filed 4/16/08, effective 5/17/08)

**WAC 246-224-0010 Definitions.** (1) "Agent" means a person, company, or dealer; which assembles, installs, repairs, sells, or leases X-ray machines.

(2) "Application" means, for the purpose of this chapter, the ~~((master))~~ business license application or business license renewal application and appropriate addenda used by the ~~((master license service))~~ BLS of the department of ~~((licensing-DOL))~~ revenue.

(3) "BLS" means the department of revenue's business licensing service.

(4) "Department" means the department of health.

~~("DOL" means the department of licensing-)~~

(5) "Facility" means all buildings, structures, and operations on one contiguous site or identified by one physical

location address designation at which one or more radiation machines are installed, manufactured, tested, or used.

(6) "FDA" means the United States Food and Drug Administration.

~~("MLS" means the department of licensing's master license service-)~~

(7) "Radiation" means, for the purposes of this chapter, ionizing radiation, including X-ray, electron beam, and other machine produced particulate radiation.

(8) "Radiation machine" means, for purposes of this chapter, a device that, when operated, produces X-ray or electron radiation, in a prescribed manner, with defined characteristics, techniques, or parameters. It does not include devices with radioactive material as the only source of radiation.

(9) "Registrant" means the owner or controller of the radiation machine who is responsible for the safe operation of the radiation machine.

(10) "Registration" means providing required information and continuing contact with the department by any person possessing a radiation machine in accordance with regulations adopted by the department.

(11) "Storage" means the status of a radiation machine that is approved by the department as being unable to produce radiation without substantial effort at set-up, reassembly, or reinstallation. For facilities with a radiation control authority, ~~((e.g.))~~ for example radiation safety office) a locking or disabling procedure may serve to provide this status.

**AMENDATORY SECTION** (Amending WSR 08-09-079, filed 4/16/08, effective 5/17/08)

**WAC 246-224-0050 When and how do I register? (1)**

You must register with the department through submission of a ~~((master))~~ business license application and appropriate addendum used by ~~((MLS))~~ BLS no later than fifteen calendar days of initial use unless shielding plans review is required.

(2) Facilities requiring shielding plan review must register with ~~((DOL))~~ BLS and submit plans to the department for review prior to construction or installation of radiation machines according to WAC 246-225-030, General requirements—Plan review.

(3) Registration is valid for one year from the department approval date, or any other date as may be determined through partnership with ~~((MLS))~~ BLS.

(4) Pay applicable registration fees according to WAC 246-254-053, Radiation machine facility registration fees.

(5) Submit registration information and applicable fees to ~~((MLS))~~ BLS in accordance with their instructions.

Note: For ~~((DOL))~~ BLS information, visit the following web site: ~~((http://www.dol.wa.gov/business/xray.htm-))~~ [www.bls.dor.wa.gov](http://www.bls.dor.wa.gov).

**AMENDATORY SECTION** (Amending WSR 08-09-079, filed 4/16/08, effective 5/17/08)

**WAC 246-224-0070 When and how do I report changes to my registration? (1)** You must notify ~~((DOL))~~ BLS within thirty days of any change to your registration information.

(2) Submit registration changes to:

Department of (~~Licensing~~) Revenue  
 (~~Master License~~) Business Licensing Service  
 P.O. Box (~~49034~~) 9034  
 Olympia, WA (~~98504~~) 98507-9034  
 (~~360-664-1400 or fax 360-570-7875~~)  
 Phone: 800-451-7985  
 Fax: 360-705-6699  
 E-mail: BLS@dor.wa.gov

Note: For office of radiation protection information, visit the following web site:  
 (<http://www.doh.wa.gov/ehp/rp/Default.htm>)  
[www.doh.wa.gov](http://www.doh.wa.gov)  
 For (~~department of licensing~~) BLS information, visit the following web site:  
 (<http://www.dor.wa.gov/business/xray.htm>)  
[www.bls.dor.wa.gov](http://www.bls.dor.wa.gov)

**AMENDATORY SECTION** (Amending WSR 08-09-079, filed 4/16/08, effective 5/17/08)

**WAC 246-224-0080 When and how do I renew my registration?** (1) You will receive registration renewal notices from (~~DOL~~) BLS.

(2) You must submit renewal information and the applicable fees to (~~DOL~~) the department of revenue as specified by (~~MLS~~) BLS.

(3) If you do not receive a renewal notice, contact (~~DOL~~) BLS.

**AMENDATORY SECTION** (Amending WSR 08-09-079, filed 4/16/08, effective 5/17/08)

**WAC 246-224-0090 What are my obligations if I close my facility or get rid of a machine?** (1) You must notify the department or (~~DOL~~) BLS of the machine status within thirty days of closure or removal.

(2) If the machine is disposed of or transferred within Washington state, you must provide the department the following:

- (a) The name and contact information of the recipient;
- (b) The address of the recipient; and
- (c) The date of the disposal or transfer.

(3) If the machine is to be placed in storage and retained, contact the department for approval.

## WSR 13-11-024

### PROPOSED RULES

### GAMBLING COMMISSION

[Filed May 7, 2013, 2:59 p.m.]

Continuance of WSR 13-01-037.

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

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

Hearing Location(s): Wenatchee Red Lion, 1225 North Wenatchee Avenue, Wenatchee, WA 98801, (509) 663-0711, on August 8 or 9, 2013, at 9:00 a.m. or 1:00 p.m.

Date of Intended Adoption: August 8 or 9, 2013. NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://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 August 1, 2013.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 50/50 Central, formerly a licensed manufacturer, submitted a petition requesting to sell raffle tickets using electronic raffle systems, including selling tickets at a discount and increasing the number of discount plans from one to four. The petition was filed for discussion at the November 2011 commission meeting. At the February 2012 commission meeting, staff reported that since the time the petition was received, 50/50 Central was purchased by another company. The new company had not applied for a license; however, we had been told by the petitioner that they planned to apply for a license. At that meeting, the commissioners voted to table the petition until a manufacturer was licensed to offer the electronic raffle systems in Washington state. The new company submitted an application in June 2012; however, they withdrew the application in July. In October 2012, Tri-City Hockey Booster Club expressed interest in the electronic raffle systems and advocated moving forward with rule making. On March 1, 2013, the new company again submitted an application for a new manufacturer license; however, in April, they requested the application be placed on hold due to costs. We have information that another organization may be interested in applying for a manufacturer license so the equipment can be used in Washington state. This continuance gives 50/50 Central and other potential applicants time to determine if they will pursue licensure or not.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0277.

Statute Being Implemented: Not applicable.

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

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

Name of Agency Personnel Responsible for Drafting: Susan Newer, Rules Coordinator, Lacey, (360) 486-3466; Implementation: David Trujillo, Interim Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs on any licensee. Although there is a cost associated with purchasing the elec-

tronic raffle system, licensees would not be required to use the system.

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

May 7, 2013  
Susan Newer  
Rules Coordinator

#### NEW SECTION

##### **WAC 230-11-200 Defining electronic raffle system.**

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

#### NEW SECTION

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

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

#### NEW SECTION

**WAC 230-11-210 Leasing electronic raffle system.** If a raffle licensee leases an electronic raffle system from a manufacturer, the lease must not be based on, in whole or in part, the raffle receipts. However, manufacturers may charge a fixed amount per event.

#### NEW SECTION

**WAC 230-16-152 Remote access of electronic raffle systems.** Licensed manufacturers or manufacturer representatives may access the electronic raffle systems for maintenance or repair.

Remote access will only be enabled for the duration of the maintenance or repair and the connection terminated immediately after.

#### **WSR 13-11-025**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed May 8, 2013, 8:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-063.

Title of Rule and Other Identifying Information: The department is proposing to amend the following rules to remove medical language reference: WAC 388-404-0005, 388-406-0010, 388-406-0040, 388-406-0060, 388-406-0065, 388-418-0007, 388-418-0020, 388-422-0005, 388-422-0010, 388-422-0020, 388-422-0030, 388-424-0006, 388-424-0008, 388-424-0009, 388-434-0005, 388-458-0011, 388-458-0016, 388-458-0025, 388-458-0030, 388-470-0005, 388-470-0012, 388-470-0045, 388-470-0060, 388-470-0070, 388-476-0005, 388-478-0005, 388-488-0005, 388-489-0020, 388-490-0005 and 388-492-0110; and repeal WAC 388-416-0010.

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>), on June 25, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 26, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on June 25, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 4, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division is proposing to amend the above WACs to remove medical language from age requirements, applications, certification periods, change of circumstances, child support, citizenship, reviews, notices, resources, social security, and verification sections. These changes are necessary as health care authority (HCA) is amending, repealing, or creating medical assistance programs rules under "Title 182 WAC" to implement new regulations.

Reasons Supporting Proposal: These proposed amendments are necessary to comply with 2E2SHB 1738, chapter 15, Laws of 2011, which designated HCA as the single state agency responsible for the administration and supervision of Washington's medicaid programs.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, and 74.08A.-120.

Statute Being Implemented: 2E2SHB 1738, chapter 15, Laws of 2011.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Leslie Kozak, 712 Pear Street S.E., Olympia, 98501, (360) 725-4589.

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."

May 8, 2013  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-03-121, filed 1/22/01, effective 3/1/01)

**WAC 388-404-0005 How does a child's age and attendance in school affect their eligibility for TANF and SFA?** (1) To be eligible for temporary assistance for needy families (TANF) or state family assistance (SFA), a child must be:

- (a) Under age eighteen; or
- (b) Under age nineteen, and participating full-time in a secondary school program or the same level of vocational or technical training.
  - (i) "Participating" means the educational or training institution finds that the child:
    - (A) Meets the school's attendance requirements; and
    - (B) Is making acceptable progress in finishing the program.
  - (ii) The educational or training institution sets the definition of "full-time" attendance and the number of classes a child must take.
  - (iii) A secondary education includes high school, a GED program, and state-approved home schools.
- (2) If a child age eighteen or older has already met the requirements to finish the educational program, the child is no longer eligible for TANF or SFA.
- (3) If the child does not qualify for assistance under subsection (1) of this section, they may qualify for SFA if the child is under age twenty-one and:
  - (a) Gets an education due to their disability as stated in RCW 28A.155.020; or
  - (b) Participates full-time in a secondary education program or an equal level of vocational training as defined in (1)(b) above.

~~((4) If a child that gets SFA is age nineteen or over, they are not eligible for family medical or SFA-related medical.))~~

AMENDATORY SECTION (Amending WSR 11-13-030, filed 6/7/11, effective 7/8/11)

**WAC 388-406-0010 How do I apply for cash assistance or Basic Food benefits?** (1) You can apply for cash assistance(~~(, medical assistance,))~~) or Basic Food by giving us an application form in person, by mail, by fax, or by completing an online application.

(2) If your entire assistance unit (AU) gets or is applying for supplemental security income (SSI), your AU can file an application for Basic Food at the local Social Security administration district office (SSADO).

(3) If you are incapacitated, a dependent child, or cannot apply for benefits on your own for some other reason, a legal guardian, caretaker, or authorized representative can apply for you.

(4) You can apply for cash assistance(~~(, medical assistance,))~~) or Basic Food with just one application form.

(5) If you apply for benefits at a local office, we accept your application on the same day you come in. If you apply at an office that does not serve the area where you live, we send your application to the appropriate office by the next business day so that office receives your application on the same day we send it.

(6) We accept your application for benefits if it has at least:

(a) For cash (~~(and medical))~~) assistance (~~(combined))~~), the name, address, and signatures of the responsible adult AU members or person applying for you. A minor child may sign if there is no adult in the AU. Signatures must be handwritten, electronic or digital as defined by the department, or a mark if witnessed by another person.

~~(b) ((For medical assistance only, the name, address, and signature of the applicant. If the application is for a child, it may be signed by an adult caretaker in the absence of a parent, or by the child in the absence of a parent or adult caretaker.~~

~~(c))~~) For Basic Food, the name, address, and signature of a responsible member of your AU or person applying for you as an authorized representative under WAC 388-460-0005.

(7) As a part of the application process, we may require you to:

- (a) Complete an interview if one is required under WAC 388-452-0005;
- (b) Meet WorkFirst participation requirements for four weeks in a row if required under WAC 388-310-1600(12);
- (c) Give us the information we need to decide if you are eligible as required under WAC 388-406-0030; and
- (d) Give us proof of information as required under WAC 388-490-0005 so we can determine if you are eligible.

(8) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 11-02-036, filed 12/29/10, effective 2/1/11)

**WAC 388-406-0040 What happens if the processing of my application is delayed?** (1) We process your application for benefits as soon as possible. We do not intentionally delay processing your application for benefits for any reason. If we have enough information to decide eligibility for(~~(-~~

(a)) Basic Food, we promptly process your request for benefits even if we need more information to determine eligibility for cash (~~(or medical;~~

(b) ~~Medical assistance, we promptly process your request for medical even if we need more information to determine eligibility for cash or Basic Food).~~

(2) If you have completed your required interview under WAC 388-452-0005 and we have enough information to determine eligibility, then we promptly process your application even if it is after thirty days from the date of your application.

(3) If additional information is needed to determine eligibility, we give you:

- (a) A written request for the additional information; and
- (b) An additional thirty days to provide the information.

(4) If you fail to keep or reschedule your interview in the first thirty calendar days after filing your application, your application will be denied on the thirtieth day, or the first business day after the thirtieth day. If you are still interested in Basic Food benefits, you will need to reapply. Benefits will be based on your second application date.

(5) If we have not processed your application for Basic Food by the sixtieth day and:

(a) You are responsible for the delay, we deny your request for benefits.

(b) If we are responsible for the delay, we:

(i) Promptly process your request if we have the information needed to determine eligibility; or

(ii) Deny your request if we don't have enough information to determine eligibility. If we deny your request, we notify you of your right to file a new application and that you may be entitled to benefits lost.

(6) If you reapply for Basic Food by the sixtieth day of your first application, met your interview requirements under WAC 388-452-0005, and are eligible, we start your benefits from:

(a) The date of your first application, if we caused the delay in the first thirty days; or

(b) The date we have enough information to make an eligibility decision, if you caused the delay in the first thirty days.

AMENDATORY SECTION (Amending WSR 11-16-028, filed 7/27/11, effective 8/27/11)

**WAC 388-406-0060 What happens when my application is denied?** (1) We (the department) deny your application for cash(~~(-medical,))~~ or Basic Food benefits if:

(a) You do not show for your interview appointment for cash or Basic Food if required under WAC 388-452-0005, you have not rescheduled, and your application is over thirty days old; or

(b) We do not have the information we need to determine your eligibility within ten days of requesting the information from your assistance unit (AU) under WAC 388-490-0005, and you did not ask for additional time to give us the information; or

(c) Your entire AU does not meet certain eligibility criteria to get benefits; or

(d) For Basic Food, your application has not been processed by the sixtieth day because of a delay on your part.

(2) If we deny your application, you do not get benefits unless:

(a) You mistakenly apply for benefits you already get; or

(b) We reconsider your eligibility under WAC 388-406-0065 and you are eligible to get benefits.

(3) We can reconsider if you are eligible for benefits under the requirements of WAC 388-406-0065 even after your application is denied.

(4) We give or send a letter to you explaining why your application was denied as required under WAC 388-458-0011.

(5) If you disagree with our decision about your application, you can ask for a fair hearing. If we deny your application because we do not have enough information to decide that you are eligible, the hearing issue is whether you are eligible using:

- (a) Information we already have; and
- (b) Any more information you can give us.

AMENDATORY SECTION (Amending WSR 08-15-011, filed 7/3/08, effective 8/3/08)

**WAC 388-406-0065 Can I still get benefits even after my application is denied?** (1) If we (the department) deny your application for benefits, we can redetermine your eligibility for benefits without a new application if:

(a) For cash (~~(or medical assistance)),~~ you give us the information we need within thirty days from the date we denied your application;

(b) You stop participating as required to reopen cash assistance under WAC 388-310-1600(12) due to one of the good reasons described in WAC 388-310-1600(3) or because you get an excused absence, as described in WAC 388-310-0500(5);

(c) For Basic Food, you give us the information we need within sixty days of the date you applied for benefits.

(2) ~~((For medical assistance, if the thirty days to reconsider your application under subsection (1) of this section has ended you can still get benefits without a new application if:~~

(a) You request a fair hearing timely; and

(b) You give us the information needed to determine eligibility and you are eligible.

~~(3))~~ If you are eligible for cash or Basic Food, we decide the date your benefits start according to WAC 388-406-0055. ~~((If you are eligible for medical assistance, we decide the date your benefits start according to chapter 388-416 WAC-))~~ For all programs the eligibility date is based on the date of your original application that was denied.

AMENDATORY SECTION (Amending WSR 08-14-105, filed 6/30/08, effective 8/1/08)

**WAC 388-418-0007 When do I have to report changes in my circumstances?** (1) If your household has a change of circumstances you are **not required to report** under WAC 388-418-0005, then you do not need to contact us about this change. If you tell us about this change, we take action based on the new information. This includes:

(a) Asking for more information we need to determine your eligibility and benefits under WAC 388-490-0005;

(b) Increasing your benefits when we have proof of a change that makes you eligible for more benefits; or

(c) Reducing or stopping your benefits based on the change.

(2) If you **are applying for** benefits and have had a change:

(a) After the date you applied but before your interview, you must report the change during your interview; or

(b) After you have been interviewed, you must report changes that we require someone who receives benefits to report as described under WAC 388-418-0005. You must report this change by the tenth day of the month following the month the change happened.

(3) If you **receive** cash assistance(~~(-medical,))~~ or Basic Food, you must report changes required under WAC 388-418-0005 by the tenth day of the month following the month the change happened.

(4) For a change in income, the date a change happened is the date you receive income based on this change. For example, the date of your first paycheck for a new job, or the date of a paycheck showing a change in your wage or salary.

(5) If we require you to complete a mid-certification review, you must complete the review to inform us of your circumstances as described under WAC 388-418-0011 in order to keep receiving benefits.

(6) If you receive TANF/SFA, and you learn that a child in your assistance unit (AU) will be gone from your home longer than one hundred eighty days, you must tell us about this within five calendar days from the date you learn this information.

(a) If you do not report this within five days, the child's caretaker is not eligible for cash benefits for one month; and

(b) We continue to budget the ineligible person's countable income as described in WAC 388-450-0162 to determine the benefits for the people still in the AU.

(7) If you report changes late, you may receive the wrong amount or wrong type of benefits. If you receive more benefits than you are eligible for, you may have to pay them back as described in chapter 388-410 WAC.

AMENDATORY SECTION (Amending WSR 06-13-043, filed 6/15/06, effective 7/17/06)

**WAC 388-418-0020 How does the department determine the date a change affects my cash and Basic Food benefits?** (1) Unless otherwise specified, the rules in this chapter refer to cash(~~(-medical assistance,))~~ and Basic Food benefits.

(2) If you report a change that happened between the date you applied for benefits and the date we interview you under

WAC 388-452-0005, we take this change into consideration when we process your application for benefits.

(3) If we learn about a change in your circumstances from another person, agency, or by matching with any number of systems, we determine the impact this change has on your benefits. We may request additional information under WAC 388-490-0005 or update your benefits based on this information.

(4) For cash and Basic Food programs (~~(other than pregnancy medical and children's medical)),~~ if you report a change in your income that we expect to continue at least a month beyond the month when you reported the change, we recalculate the income we estimated under WAC 388-450-0215 based on this change. (~~(Changes in income during a certification period do not affect pregnancy medical or children's medical assistance.))~~)

(5) When a change causes an increase in benefits, you must provide proof of the change before we adjust your benefits.

(a) If you give us the proof within ten days from the date we requested it, we increase your benefits starting the month after the month you reported the change.

(b) If you give us the proof more than ten days after the date we requested it, we increase your benefits starting the month after the month we got the proof.

(c) If you are eligible for more benefits and we have already sent you benefits for that month, we provide you the additional benefits within ten days of the day we got the proof.

(6) When a change causes a decrease in benefits, we reduce your benefit amount without asking for proof.

(a) If you report a change within the time limits in WAC 388-418-0007, and you are not reporting this as part of a mid-certification review, we decrease your benefits starting the first month following the advance notice period. The advance notice period:

(i) Begins on the day we send you a letter about the change, and

(ii) Is determined according to the rules in WAC 388-458-0025.

(b) If you do not report a change you must tell us about under WAC 388-418-0005, or you report a change later than we require under WAC 388-418-0007, we determine your eligibility as if you had reported this on time. If you received more benefits than you should, we set up an overpayment as described under chapter 388-410 WAC.

(7) If we are not sure how the change will affect your benefits, we send you a letter as described in WAC 388-458-0020 requesting information from you.

(a) We give you ten days to provide the information. If you need more time, you can ask for it.

(b) If you do not give us the information in time, we will stop your benefits after giving you advance notice, if required, as described in WAC 388-458-0030.

(8) Within ten days of the day we learn about a change, we send advance notice according to the rules in chapter 388-458 WAC and take necessary action to provide you the correct benefits. If you request a hearing about a proposed decrease in benefits before the effective date or within the

notice period as described in WAC 388-458-0040, we wait to take action on the change.

(9) If you disagree with a decision we made to change your benefits, you may request a fair hearing under chapter 388-02 WAC. The fair hearing rules in chapter 388-02 WAC do not apply for a "mass change." A mass change is when we change the rules that impact all recipients and applicants.

(10) When you request a hearing and receive continued benefits:

(a) We keep giving you the same benefits you got before the advance notice of reduction until the earliest of the following events occur:

(i) For Basic Food only, your certification period expires;

(ii) The end of the month the fair hearing decision is mailed;

(iii) You state in writing that you do not want continued benefits;

(iv) You withdraw your fair hearing request in writing;

or

(v) You abandon your fair hearing request; or

(vi) An administrative law judge issues a written order that ends continued benefits prior to the fair hearing.

(b) We establish an overpayment claim according to the rules in chapter 388-410 WAC when the hearing decision agrees with the action we took.

(11) Some changes have a specific effective date as follows:

(a) When cash assistance benefits increase because a person is added to your assistance unit, we use the effective date rules for applications in WAC 388-406-0055.

(b) When cash assistance benefits increase because you start paying shelter costs, we use the date the change occurred.

(c) When a change in law or regulation changes the benefit amount, we use the date specified by the law or regulation.

~~((d) When institutional medical assistance participation changes, we calculate the new participation amount beginning with the month your income or allowable expense changes.))~~

AMENDATORY SECTION (Amending WSR 10-02-037, filed 12/30/09, effective 1/30/10)

**WAC 388-422-0005 What happens to my child(~~spousal~~) and (~~medical~~) spousal support when I get public assistance?** (1) The following definitions apply to this chapter:

(a) "**We**" means the department of social and health services.

(b) "**You**" means a person applying for or getting benefits from us.

(c) "**Benefits**" means ~~((family medical and related alien emergency medical (AEM);))~~ TANF or SFA cash assistance.

(d) "**Support**" means the money paid to meet a support order whether it is called child support, spousal support, alimony, or maintenance(~~or medical~~) support.

(e) ("**Medical support**" means either or both:

~~(i) The set dollar amount for health care costs in a support order; or~~

~~(ii) Health insurance coverage for a dependent child.~~

~~(f))~~ "**Assistance unit**" or "**AU**" means the group of people who live together and whose income and resources we count to decide your eligibility for benefits and the amount of those benefits.

(2) When you apply for TANF or SFA cash benefits, you permanently assign to the state your current support for the months you get assistance. If you applied for TANF or SFA cash benefits before October 1, 2008, support for months before you begin receiving assistance (also called "arrears" under WAC 388-14A-2036) is temporarily assigned to the state. For more information about permanently and temporarily assigned support see:

(a) Permanently assigned arrears, WAC 388-14A-2037.

(b) Temporarily assigned arrears, WAC 388-14A-2038.

~~(3) ((You assign your rights to medical support under WAC 388-505-0540 when you apply for or get benefits from the following:~~

~~(a) Family medical; or~~

~~(b) Children's medical.~~

~~(4))~~ You assign your rights to support when your application for benefits is approved by the department.

~~((5))~~ (4) If you have a good reason (WAC 388-422-0020) DCS may not be able to establish or collect child support (WAC 388-14A-2060).

~~((6))~~ (5) If you receive any support payments before you assign your rights to support, we count this as unearned income to your AU (WAC 388-450-0025).

~~((7))~~ (6) If you receive any direct support payments during the month you apply, you must report these payments and we may count them as unearned income in determining your eligibility for benefits.

~~((8))~~ (7) If you keep any support payments you receive after you assign your rights to support, DCS may collect this money from you (WAC 388-14A-5505).

AMENDATORY SECTION (Amending WSR 02-19-041, filed 9/11/02, effective 10/12/02)

**WAC 388-422-0010 Do I have to cooperate with the division of child support (DCS)?** (1) When you get benefits, you must cooperate with DCS as required to establish or collect child support, unless you have a good reason for not cooperating.

(2) DCS defines what cooperating with them to establish or collect child support means in WAC 388-14A-2040.

(3) If you are a two-parent household, you and the other parent must help DCS establish paternity for each child in your AU, if necessary.

(4) DCS determines whether you are cooperating with them. See WAC 388-14A-2041(1) for reasons why DCS might determine that you are not cooperating.

(5) If you get TANF or SFA and do not have a good reason for not cooperating with DCS, we(~~re~~

~~(a))~~ reduce your cash benefits by twenty-five percent(~~re~~ and

~~(b) Stop your medical benefits unless you are pregnant. The children in your AU will continue to get medical.~~



~~(6) If you get family medical and do not have a good reason for not cooperating with DCS, your medical will stop unless you are pregnant. The children in your AU will continue to get medical).~~

~~((7))~~ (6) If you are afraid that cooperating with DCS may be dangerous for you or a child in your care, see WAC 388-14A-2045 for a definition of what a good reason to cooperate with DCS is. We also call this "good cause."

AMENDATORY SECTION (Amending WSR 02-19-041, filed 9/11/02, effective 10/12/02)

**WAC 388-422-0020 What if you are afraid that cooperating with the division of child support (DCS) may be dangerous for you or the child in your care?** (1) You can be excused from cooperating with DCS when you have a good reason. A good reason not to cooperate is also called good cause. You have a good reason when you can prove that:

(a) Cooperating with DCS would result in serious physical or emotional harm to you or the child in your care.

(b) Establishing paternity or getting support would be harmful to the child who:

(i) Was conceived as a result of incest or rape; or

(ii) Is the subject of legal adoption proceedings pending before a superior court; or

(iii) Is the subject of ongoing discussions between you and a public or licensed child placement agency to decide whether you will keep the child or put the child up for adoption. The discussions cannot have gone on for more than three months.

(2) Once you claim good cause for TANF/SFA, you have twenty days to give us the information that proves you have good cause not to cooperate with DCS. This information can include official records, sworn statements, or other information that supports your good cause claim. If you need to, you may ask for:

(a) More time to give proof; or

(b) Help in getting proof.

(3) While we review your good cause claim, DCS does not take any action to establish or enforce support on your case.

(4) You have the right to:

(a) Be told of your right to claim good cause for not cooperating with DCS;

(b) Get benefits while we are deciding your good cause claim, as long as you have given the proof needed to make a decision;

(c) Get a decision within thirty days from the date you made your good cause claim, as long as you have given the proof needed to make a decision within twenty days; and

(d) Get information about how to request a fair hearing if we deny your good cause claim.

(5) If we approve your good cause claim, we periodically review the claim depending on your circumstances.

(6) To see what DCS does when good cause is approved see WAC 388-14A-2060.

AMENDATORY SECTION (Amending WSR 02-19-041, filed 9/11/02, effective 10/12/02)

**WAC 388-422-0030 What happens if my support is more than my TANF or SFA cash benefit?** (1) If DCS collects current support that is more than your TANF or SFA cash benefit for two months in a row, your cash benefit stops at the end of the third month.

~~(2) ((You can read WAC 388-418-0025 for information on continued medical benefits.~~

~~(3))~~ You may be able to get continued food assistance benefits.

~~((4))~~ (3) You can read WAC 388-310-0800 to see what kinds of support services you may be able to get.

AMENDATORY SECTION (Amending WSR 11-16-056, filed 7/29/11, effective 8/29/11)

**WAC 388-424-0006 Citizenship and alien status—Date of entry.** (1) A person who physically entered the U.S. prior to August 22, 1996 and who continuously resided in the U.S. prior to becoming a "qualified alien" (as defined in WAC 388-424-0001) is not subject to the five-year bar on receiving TANF ~~((and non-emergency medical for non-pregnant adults)).~~

(2) A person who entered the U.S. prior to August 22, 1996 but became "qualified" on or after August 22, 1996, and who physically entered the U.S. on or after August 22, 1996 and who requires five years of residency to be eligible for federal Basic Food, can only count years of residence during which they were a "qualified alien."

(3) A person who physically entered the U.S. on or after August 22, 1996 is subject to the five-year bar for TANF ~~((and non-emergency medical for non-pregnant adults.))~~ unless exempt. The five-year bar starts on the date that "qualified" status is obtained. ~~((The medical and CHIP programs do not have a five-year bar for children under nineteen, children under twenty-one years of age who are residing in a medical institution as described in WAC 388-505-0230, or pregnant women.))~~

(4) The following "qualified aliens," as defined in WAC 388-424-0001, are exempt from the five-year bar:

(a) Amerasian lawful permanent residents;

(b) Asylees;

(c) Cuban/Haitian entrants;

(d) Persons granted withholding of deportation or removal;

(e) Refugees;

(f) Special immigrants from Iraq and Afghanistan;

(g) Victims of trafficking who have been certified or had their eligibility approved by the office of refugee resettlement (ORR); and

(h) Lawful permanent residents, parolees, or battered aliens, as defined in WAC 388-424-0001, who are also an armed services member or veteran as described in WAC 388-424-0007.

AMENDATORY SECTION (Amending WSR 04-15-004, filed 7/7/04, effective 8/7/04)

**WAC 388-424-0008 Citizenship and alien status—Work quarters.** (1) For purposes of determining Social Security work quarters, the following are considered federal means-tested benefits:

(a) Temporary assistance for needy families (TANF); ~~nonemergency medicaid, state children's health insurance program (SCHIP), supplemental security income (SSI);~~; and

(b) Federal Basic Food.

(2) An immigrant can receive credit for work quarters by:

(a) Earning enough money to qualify for work quarters;

(b) Getting credit for work quarters earned by a parent or step parent while the alien was under eighteen (including quarters earned before the alien was born); and

(c) Getting credit for work quarters earned by a spouse during the marriage (including a now deceased spouse) or during a period when a couple "hold themselves out" as married.

(3) An immigrant may receive credit for work quarters earned while residing in the U.S. regardless of their (or their family member's) immigration status at the time the money was earned.

(4) An immigrant cannot receive credit for a work quarter on or after January 1, 1997 if the person earning or being credited with the work quarter received a federal means-tested benefit during the quarter.

(5) If the person earning the quarter applied for a federal means-tested benefit during the fortieth quarter and the person earning the quarter earned enough money to qualify for benefits before applying for benefits, the quarter is credited.

(6) An immigrant can be provisionally credited with forty work quarters for up to six months while awaiting verification of work quarters only if:

(a) SSA responded that the immigrant (and spouse and parents) has less than forty quarters, but SSA is making an investigation to see if more quarters can be credited; or

(b) The immigrant has turned in a request to another federal agency for proof of the immigrant's eligible alien status and the agency has accepted the request.

AMENDATORY SECTION (Amending WSR 11-16-056, filed 7/29/11, effective 8/29/11)

**WAC 388-424-0009 Citizenship and alien status—Social Security number (SSN) requirements.** (1) Any person who has applied for a Social Security number (SSN) as part of their application for benefits cannot have benefits delayed, denied, or terminated pending the issuance of the SSN by the Social Security Administration (SSA).

(2) The following immigrants are not required to apply for an SSN:

(a) An alien, regardless of immigration status, who is applying for a program listed in WAC ~~((388-476-0005(7)))~~ 388-476-0005(6);

(b) A nonqualified alien ~~((who is not applying for children or pregnancy related medical as listed in WAC 388-424-0010(4)))~~; and

(c) Members of a household who are not applying for benefits for themselves.

(3) "Qualified and nonqualified aliens," as defined in WAC 388-424-0001, who are applying for federal benefits but who are not authorized to work in the U.S., must still apply for a nonwork SSN. The department must assist them in this application without delay.

(4) Any person who is otherwise eligible for benefits may choose not to provide the department with an SSN without jeopardizing the eligibility of others in the household. See WAC 388-450-0140 for how the income of such individuals is treated.

AMENDATORY SECTION (Amending WSR 04-19-134, filed 9/21/04, effective 10/1/04)

**WAC 388-434-0005 How often does the department review my eligibility for benefits?** (1) If you receive cash assistance, the department reviews your eligibility for assistance at least once every twelve months.

(2) When it is time for your eligibility review, the department requires you to complete a review. We use the information you provide to determine your eligibility for all assistance programs.

(3) If you complete an interview for assistance with a department representative and sign the printed application for benefits (AFB) form, you do not have to complete a separate review form.

(4) For cash assistance, an eligibility review form or the AFB must be dated and signed by both husband and wife, or both parents of a child in common when the parents live together.

~~((For medical assistance, a signature is not required to complete your review.~~

~~((6)))~~ We may review your eligibility at any time if we decide your circumstances need to be reviewed sooner.

~~((7)))~~ (6) At your review, we look at:

(a) All eligibility requirements under WAC 388-400-0005 through ~~((388-400-0035, 388-503-0505 through 388-503-0515, and 388-505-0210 through 388-505-0220))~~ 388-400-0030;

(b) Changes since we last determined your eligibility; and

(c) Changes that are anticipated for the next review period.

~~((8)) If you receive medical assistance, we set your certification period according to WAC 388-416-0010, 388-416-0015, 388-416-0020, and 388-416-0035.~~

~~((9)) Clients~~ (7) You are responsible for attending an interview if one is required under WAC 388-452-0005.

~~((10))~~ (8) If you do not complete the eligibility review for cash assistance, we consider you to be withdrawing your request for continuing assistance ~~((and~~

~~((and your cash assistance benefits will end))~~ ~~((and your medical assistance will continue for twelve consecutive months from the month we received your most recent application or eligibility review))~~.

~~((11))~~ (9) We will send you written notice as described under chapter 388-458 WAC before assistance is suspended,

terminated, or a benefit error is established as a result of your eligibility review.

~~((12))~~ If you currently receive Categorically Needy (CN) medical assistance, and you are found to no longer be eligible for benefits, we will determine if you are eligible for other medical programs. Until we decide if you are eligible for another program, your (CN) medical assistance will continue under WAC 388-418-0025.

~~(13))~~ (10) When you need a supplemental accommodation under WAC 388-472-0010, we will help you meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 12-19-036, filed 9/12/12, effective 10/13/12)

**WAC 388-458-0011 DSHS sends you a denial letter when you can't get benefits.** (1) When we finish processing your application, we send you a denial letter if you cannot get benefits.

(2) On this letter, we tell you:

- (a) Why you cannot get benefits;
- (b) The rules that support our decision;
- (c) The date we finished processing your application;

and

(d) Your right to have your case reviewed or ask for an administrative hearing.

(3) If we are denying your application because you did not give us information that we needed and we can't figure out if you are eligible without it, we also tell you on the letter:

- (a) What information you didn't give to us;
- (b) The date we asked for the information and the date it was due;
- (c) That we cannot figure out if you can get benefits without this information; and
- (d) That we will review your eligibility if:
  - (i) For cash ~~((and medical))~~ assistance, you give us the information within thirty days of the date of the notice; or
  - (ii) For food assistance, you give us the information within sixty days of the date you applied.

(4) We send denial letters to you according to the rules in chapter 388-406 WAC.

AMENDATORY SECTION (Amending WSR 01-16-087, filed 7/25/01, effective 9/1/01)

**WAC 388-458-0016 DSHS sends you an approval letter when you can get benefits.** (1) When we finish processing your application, we send you an approval letter if you can get benefits.

(2) On this letter, we tell you:

- (a) What kind of benefits you get;
- (b) If you applied for cash or food assistance, the amount of benefits you get;
- (c) ~~((If you applied for medical, what type of medical; ~~(d))~~))~~ How long you will get the benefits; and
- ~~((e))~~ (d) Your right to have your case reviewed or ask for a fair hearing.

(3) We send approval letters to you according to the rules in chapter 388-406 WAC.

AMENDATORY SECTION (Amending WSR 01-16-087, filed 7/25/01, effective 9/1/01)

**WAC 388-458-0025 We send you a change letter if the amount of benefits you are getting is changing.** (1) We send you a change letter if the amount of benefits you are getting is changing.

(2) On the letter, we tell you:

- (a) What your benefits are changing to;
- (b) When the change is going to happen;
- (c) The reason for the change;
- (d) The rules that support our decision; and
- (e) Your right to have your case reviewed or ask for a fair hearing.

(3) We send the letter to you before the change happens. If your benefits are going down, we give you at least ten days notice unless:

- (a) You ask us to reduce your benefits;
- (b) We have to change benefits for a lot of people at once because of a law change;
- (c) For cash and food assistance:
  - (i) We told you on your approval letter that your benefits might change every month because you have fluctuating income; or

(ii) We already told you that the supplement would end.

(d) For cash assistance, we told you that the AREN payment described in WAC 388-436-0002 was for one month only.

(4) The ten-day count starts on the day we mail or give you the letter and ends on the tenth day.

(5) If we don't have to give you ten days notice, we send the letter to you:

- (a) For cash ~~((and medical))~~ assistance, by the date of the action.
- (b) For food assistance, by the date you normally get your benefits.

AMENDATORY SECTION (Amending WSR 02-14-086, filed 6/28/02, effective 7/1/02)

**WAC 388-458-0030 We send you a termination letter when your benefits stop.** (1) We send you a termination letter when your benefits stop.

(2) On the letter, we tell you:

- (a) When your benefits are going to end;
- (b) The reason they are ending;
- (c) The rules that support our decision; and
- (d) Your right to have your case reviewed or ask for a fair hearing.

(3) We tell you at least ten days before your benefits end unless;

- (a) You asked us to stop your benefits;
- (b) We have proof that everyone in your assistance unit has moved to another state or will move to another state before the next benefits are issued;
- (c) We have proof that everyone in your assistance unit has died;
- (d) We have to change benefits for a lot of people at once because of a law change;
- (e) We got returned mail from the post office that says you have moved and we do not have a forwarding address; or

(f) For food assistance, your certification period is ending.

(4) The ten-day count starts on the day we mail or give you the letter and ends on the tenth day.

(5) If we don't have to give you ten days notice, we send the letter to you:

(a) For cash (~~(and medical)~~) assistance, by the date of the action.

(b) For food assistance, by the date you normally get your benefits.

AMENDATORY SECTION (Amending WSR 03-05-015 [11-24-028], filed 12/1/11, effective 1/1/12)

**WAC 388-470-0005 How do resources affect my eligibility for cash assistance(~~(, medical assistance,))~~ and Basic Food?** (1) The following definitions apply to this chapter:

(a) **"We"** means the department of social and health services.

(b) **"You"** means a person applying for or getting benefits from the department.

(c) **"Fair market value (FMV)"** means the price at which you could reasonably sell the resource.

(d) **"Equity value"** means the FMV minus any amount you owe on the resource.

(e) **"Community property"** means a resource in the name of the husband, wife, or both.

(f) **"Separate property"** means a resource of a married person that one of the spouses:

(i) Had possession of and paid for before they were married;

(ii) Acquired and paid for entirely out of income from separate property; or

(iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance(~~(, family medical programs,))~~ or Basic Food when:

(a) It is a resource we must count under WAC 388-470-0045 and 388-470-0055;

(b) You own the resource. We consider you to own a resource if:

(i) Your name is on the title to the property; or

(ii) You have property that doesn't have a title; and

(c) You have control over the resource, which means the resource is actually available to you; and

(d) You could legally sell the resource or convert it into cash within twenty days.

(3) For cash assistance (~~(and family medical programs,))~~, you must try to make your resources available even if it will take you more than twenty days to do so, unless:

(a) There is a legal barrier; or

(b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

(a) The date of your interview, if you are required to have an interview; or

(b) The date of your application, if you are not required to have an interview(~~(, or~~

~~(e) The first day of the month of application, for medical assistance)).~~

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance (~~(and applicants for family medical programs,))~~, we use the equity value as the value of your resources.

(a) Applicants can have countable resources up to one thousand dollars.

(b) Recipients of cash assistance can have an additional three thousand dollars in a savings account.

~~(7) ((Recipients of family medical programs do not have a resource limit.~~

~~(8) We do not count your resources for children's medical or pregnancy medical benefits.~~

~~(9) For SSI-related medical assistance, see chapter 388-475 WAC.~~

~~(10) For clients receiving institutional or wavered services, see chapters 388-513 and 388-515 WAC.~~

~~(11) If your household consists of more than one medical assistance unit (MAU), as described in WAC 388-408-0055, we look at the resources for each MAU separately.~~

~~(12))~~ If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for Basic Food.

~~((13))~~ (8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for Basic Food:

(a) Three thousand two hundred fifty dollars if your AU has either an elderly or disabled individual; or

(b) Two thousand dollars for all other AUs.

~~((14))~~ (9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For (~~(medical assistance and))~~ Basic Food, we count the entire amount unless you can prove that the entire amount is not available to you.

~~((15))~~ (10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

~~((16))~~ (11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

~~((17))~~ (12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household; or

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

~~((18))~~ (13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of the resource;

- (c) The value of a resource;
- (d) The availability of a resource; or
- (e) The portion of a property you or another person owns.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**AMENDATORY SECTION** (Amending WSR 03-05-015, filed 2/7/03, effective 3/1/03)

**WAC 388-470-0012 Does the department look at the resources of people who are not getting benefits?** Yes we do. We count the resources of certain people who live in your home, even if they are not getting assistance. Their resources count as part of your resources.

(1) For cash assistance, we count the resources of ineligible, disqualified, or financially responsible people as defined in WAC 388-450-0100.

(2) For Basic Food, we count the resources of ineligible assistance unit (AU) members as defined in WAC 388-408-0035.

~~(3) ((For family and SSI-related medical assistance, we count the resources of financially responsible people as defined in WAC 388-408-0055.~~

~~(4) For long-term care services, we count the resources of financially responsible people as defined in WAC 388-506-0620.~~

~~(5))~~ For cash assistance~~((, medical assistance,))~~ and Basic Food, we also count the resources of an immigrant's sponsor as described in WAC 388-470-0060.

**AMENDATORY SECTION** (Amending WSR 11-21-025, filed 10/11/11, effective 10/29/11)

**WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance ((and family medical programs))?** (1) We count the following resources toward your assistance unit's resource limits for cash assistance ((and family medical programs)) to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;
- (iv) Available retirement funds or pension benefits, less any withdrawal penalty;
- (v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (vi) Available trusts or trust accounts;
- (vii) Lump sum payments as described in chapter 388-455 WAC; or
- (viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

(i) A household good;

(ii) Needed for self-employment; or

(iii) Of "great sentimental value," due to personal attachment or hobby interest.

(i) Resources of a sponsor as described in WAC 388-470-0060.

(j) For cash assistance only, sales contracts.

(2) The following types of liquid resources do not count when we determine your eligibility:

(a) Bona fide loans, including student loans;

(b) Basic Food benefits;

(c) Income tax refunds for twelve months from the date of receipt;

(d) Earned income tax credit (EITC) in the month received and for up to twelve months;

(e) Advance earned income tax credit payments;

(f) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(g) Individual development accounts (IDAs) established under RCW 74.08A.220;

(h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;

(i) Underpayments received under chapter 388-410 WAC;

(j) Educational benefits that are excluded as income under WAC 388-450-0035;

(k) The income and resources of an SSI recipient;

(l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

(m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;

(n) Adoption support payments;

(o) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

~~(p) Resources specifically excluded by federal law((, and (q) For medical benefits, receipts from exercising federally protected rights or extracted exempt resources (fishing, shell fishing, timber sales, etc.) during the month of receipt for a member of a federally recognized tribe)).~~

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

(i) Employment;

(ii) Training for future employment;

- (iii) Illness; or
- (iv) Natural disaster or casualty.
- (c) Property that:
  - (i) You are making a good faith effort to sell;
  - (ii) You intend to build a home on, if you do not already own a home;
  - (iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or
  - (iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

- (i) Closing on your new home is taking longer than anticipated;
- (ii) You are unable to find a new home that you can afford;
- (iii) Someone in your household is receiving emergent medical care; or
- (iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

AMENDATORY SECTION (Amending WSR 01-21-026, filed 10/9/01, effective 11/1/01)

**WAC 388-470-0060 How does the department decide how much of my sponsor's resources affect my eligibility for cash(~~(-medical)~~) and food assistance benefits?** (1) If you are a sponsored immigrant as defined in WAC 388-450-0155, and you are not exempt from deeming under WAC 388-450-0156, we count part of your sponsor's resources as available to you.

(2) We decide the amount of your sponsor's resources to count by:

- (a) Totaling the countable resources of the sponsor and the sponsor's spouse (if the spouse signed the affidavit of support) under chapter 388-470 WAC;
- (b) Subtracting fifteen hundred dollars; and
- (c) Counting the remaining amount as a resource that is available to you.

(3) If you can show that your sponsor has sponsored other people as well, we divide the result by the total number of people who they sponsored.

(4) We continue to count your sponsor's resources when we determine your eligibility for benefits until you are exempt from deeming under WAC 388-450-0156.

AMENDATORY SECTION (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

**WAC 388-470-0070 How vehicles are counted toward the resource limit for cash assistance (~~(and family medical programs)~~).** (1) A vehicle is any device for carrying persons and objects by land, water, or air.

(2) The entire value of a licensed vehicle needed to transport a physically disabled assistance unit member is excluded.

(3) The equity value of one vehicle up to five thousand dollars is excluded when the vehicle is used by the assistance unit or household as a means of transportation. (~~(Each separate medical assistance unit is allowed this exclusion.)~~)

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-476-0005 Social Security number requirements.** (1) With certain exceptions, each person who applies for or receives cash(~~(-medical)~~) or food assistance benefits must provide to the department a Social Security number (SSN), or numbers if more than one has been issued. For SSN requirements for immigrants, see WAC 388-424-0009.

(2) If the person is unable to provide the SSN, either because it is not known or has not been issued, the person must:

- (a) Apply for the SSN;
- (b) Provide proof that the SSN has been applied for; and
- (c) Provide the SSN when it is received.

(3) Assistance will not be delayed, denied or terminated pending the issuance of an SSN by the Social Security Administration. However, a person who does not comply with these requirements is not eligible for assistance.

(4) For cash(~~(-medical)~~) and food assistance benefits, a person cannot be disqualified from receiving benefits for refusing to apply for or supply an SSN based on religious grounds.

(5) For food assistance programs:

(a) A person can receive benefits for the month of application and the following month if the person attempted to apply for the SSN and made every effort to provide the needed information to the Social Security Administration.

(b) If a person is unable to provide proof of application for a SSN for a newborn:

(i) The newborn can receive Basic Food with the household while effort is being made to get the SSN.

(ii) For the newborn to continue receiving Basic Food benefits; the household must provide proof of application for SSN or the SSN for the newborn, at the next recertification, or within six months following the month the baby is born, whichever is later.

(6) (~~(For medical programs, a newborn as described in WAC 388-505-0210(1) is eligible for categorically needy (CN) medical without meeting the SSN requirement until the baby's first birthday.~~)

(7)) There is no SSN requirement for the following programs:

- (a) The consolidated emergency assistance program; and
- (b) The refugee cash (~~and medical~~) assistance program(~~;~~
- ~~(c) The alien emergency medical program; and~~
- ~~(d) Detoxification services).~~

AMENDATORY SECTION (Amending WSR 12-18-023, filed 8/27/12, effective 9/27/12)

**WAC 388-478-0005 Cash assistance need and payment standards and grant maximum.** (1) Need standards for cash assistance programs represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living. Need standards are based on assistance unit size and include basic requirements for food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(2) Payment standards for assistance units in medical institutions and other facilities are based on the need for clothing, personal maintenance, and necessary incidentals (see WAC (~~388-478-0040 and 388-478-0045~~)) 182-513-1300 and 182-515-1500.

(3) Need and payment standards for persons and families who do not reside in medical institutions and other facilities are based on their obligation to pay for shelter.

(a) Eligibility and benefit levels for persons and families who meet the requirements in WAC 388-478-0010 are determined using standards for assistance units with an obligation to pay shelter costs.

(b) Eligibility and benefit levels for all other persons and families are determined using standards for assistance units who have shelter provided at no cost.

(c) For recent arrivals to Washington state who apply for temporary assistance for needy families (TANF), see WAC 388-468-0005.

(4) Starting July 1, 2012, the monthly cash assistance grant for an assistance unit cannot exceed the payment standard for a family of eight listed in WAC 388-478-0020(1).

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-488-0005 Transfer of property to qualify for cash assistance.** This rule applies to cash assistance programs only (~~and does not affect medicaid eligibility for a person who is not institutionalized. For transfer of property for institutional medical see WAC 388-513-1365~~)).

(1) An assistance unit is disqualified from receiving benefits when it transferred or transfers real or personal property for less than its market value in an attempt to qualify for benefits:

- (a) Two years prior to the date of application;
- (b) During the application process; or
- (c) Anytime while receiving benefits.

(2) When an assistance unit transferred property for less than its fair market value in an attempt to qualify for benefits, the disqualification period:

(a) For applicants, begins the first day of the month the property was transferred.

(b) For recipients, begins the first day of the month after the month the property was transferred.

(3) To determine the number of months an assistance unit will be disqualified, divide the uncompensated resource value of the transferred property by the state gross median income. The uncompensated resource value is the equity value minus the amount the client received when transferring a resource.

(4) An assistance unit can provide evidence to clarify the reasons for transferring the property when the department presumes that the assistance unit transferred the property in an attempt to qualify for benefits.

(5) The benefits received by an assistance unit are not affected by the transfer of separate property of a spouse who is not a member of the assistance unit.

(6) An assistance unit's disqualification period is reduced when the client:

(a) Verifies undue hardship will exist if the benefits are denied such as an eviction;

(b) Secures a return of some or all of the transferred property or the equivalent value of the transferred property;

(c) Verifies an unforeseen change in circumstances such as extensive hospitalization; or

(d) Is responsible for and can verify medical expenses.

(7) When a disqualification period has been adjusted and the client is otherwise eligible, benefits will be authorized. Any benefits authorized because of the reason(s) in subsection (6) of this section, are not considered an overpayment.

AMENDATORY SECTION (Amending WSR 10-13-047, filed 6/9/10, effective 8/1/10)

**WAC 388-489-0020 Am I required to report changes in my household's circumstances while on transitional food assistance?** (1) If you only receive transitional food assistance, you are not required to report any changes in your household circumstances.

(2) If you receive benefits from another cash (~~or medical assistance~~) program, you must meet the reporting requirements for the other program as required by WAC 388-418-0005. Except for changes listed under WAC 388-489-0025, the changes you report for the other program will not affect your household's eligibility for transitional food assistance.

(3) If your household experiences a change in circumstances during your five-month transition period, and you think that you may be eligible for more food assistance, you may submit an application for the regular Basic Food program under WAC 388-489-0022. Examples of such changes include the loss of income by a person who gets transitional food assistance with you or adding a new person to your household.

AMENDATORY SECTION (Amending WSR 11-02-072, filed 1/5/11, effective 2/5/11)

**WAC 388-490-0005 The department requires proof before authorizing benefits for cash( ~~medical~~) and**

**Basic Food.** This rule applies to cash(~~(-medical,))~~ and Basic Food.

(1) When you first apply for benefits, the department may require you to provide proof of things that help us decide if you are eligible for benefits. This is also called "verification." The types of things that need to be proven are different for each program.

(2) After that, we will ask you to give us proof when:

- (a) You report a change;
- (b) We find out that your circumstances have changed;

or

(c) The information we have is questionable, confusing, or outdated.

(3) Whenever we ask for proof, we will give you a notice as described in WAC 388-458-0020.

(4) You must give us the proof within the time limits described in:

(a) WAC 388-406-0030 if you are applying for benefits; and

(b) WAC 388-458-0020 if you currently receive benefits.

(5) We will accept any proof that you can easily get when it reasonably supports your statement or circumstances. The proof you give to us must:

- (a) Clearly relate to what you are trying to prove;
- (b) Be from a reliable source; and
- (c) Be accurate, complete, and consistent.

(6) We cannot make you give us a specific type or form of proof.

(7) If the only type of proof that you can get costs money, we will pay for it.

(8) If the proof that you give to us is questionable or confusing, we may:

(a) Ask you to give us more proof, which may include providing a collateral statement. A "collateral statement" is from someone outside of your residence who knows your situation;

(b) Schedule a visit to come to your home and verify your circumstances; or

(c) Send an investigator from the Division of Fraud Investigations (DFI) to make an unannounced visit to your home to verify your circumstances.

(9) By signing the application, eligibility review, or change of circumstances form, you give us permission to contact other people, agencies, or institutions.

(10) If you do not give us all of the proof that we have asked for, and we have not granted you an extension to give us the rest of the information we need as described in WAC 388-406-0030, we will determine if you are eligible based on the information that we already have. If we cannot determine that you are eligible based on this information, we will deny or stop your benefits.

~~((11) For all Medicaid programs, you must provide proof of citizenship and identity as specified at Section 6036 of the Deficit Reduction Act of 2005 (PL 106-171 amending U.S.C. 1396b). Exempt from this requirement are recipients of:~~

~~(a) Title IV B child welfare services, or Title IV E adoption assistance or foster care payments;~~

~~(b) SSI benefits;~~

~~(c) Social Security benefits (based on their own disability); or~~

~~(d) Medicare.)~~

AMENDATORY SECTION (Amending WSR 12-17-087, filed 8/15/12, effective 9/15/12)

**WAC 388-492-0110 What happens if my WASHCAP food benefits end?** (1) If your WASHCAP food benefits end because you did not have the review required under WAC 388-492-0100, you must finish the required review or apply for Basic Food benefits:

(a) By contacting the customer service center (CSC) at 1-877-501-2233;

(b) Over the internet;

(c) At any community services office (CSO);

(d) At any home and community services (HCS) office; or

(e) At any Social Security Administration (SSA) office.

(2) If your WASHCAP benefits end because you are disqualified under WAC 388-400-0040 (12)(b) or (e), you are not eligible for Basic Food benefits and(~~(-~~

~~(a) If you get medical assistance, we will send your medical assistance case to your local office;~~

~~(b))~~ if you are a HCS client, your medical case will remain at HCS.

(3) If your WASHCAP benefits end for any other reason:

(a) We will send you an application for Basic Food benefits along with the address of your local CSO. ~~((If you are an HCS client, your case will remain at your HCS office.))~~

(b) For the local CSO to decide if you are eligible for Basic Food benefits, you must:

(i) Finish the application process for Basic Food benefits under chapter 388-406 WAC; and

(ii) Have an interview for Basic Food benefits under WAC 388-452-0005.

~~((c) If you get medical assistance, we will send your medical case to the local CSO unless you are an HCS client;~~

~~(d) If your WASHCAP benefits closed because SSA ended your SSI, you will still receive the same medical benefits until we decide what medical program you are eligible for under WAC 388-418-0025.))~~

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-416-0010	Medical certification periods for recipients of cash assistance programs.
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#### **WSR 13-11-026**

#### **PROPOSED RULES**

#### **LIQUOR CONTROL BOARD**

[Filed May 8, 2013, 11:12 a.m.]

Supplemental Notice to WSR [13-07-031].



Preproposal statement of inquiry was filed as WSR 12-12-013.

Title of Rule and Other Identifying Information: Chapter 314-02 WAC, Requirements for retail liquor licenses and new section WAC 314-02-1071, was created for this rule.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on June 26, 2013, at 10:00 a.m.

Date of Intended Adoption: July 3, 2013.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by June 26, 2013.

Assistance for Persons with Disabilities: Contact Karen McCall by June 26, 2013, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 66.24.630, created with the passing of Initiative 1183, require clarification on the definition of "trade area" to determine if a location for a spirits retail license in a location less than 10,000 square feet of retail space meets the requirements for the license.

Revisions to the proposed rules were requested at the public hearing. The board is filing the supplemental CR-102 to include the revisions.

Reasons Supporting Proposal: Rules will clarify the definition of "trade area" for those applicants wanting to open a spirits retail licensed location under 10,000 square feet. The law did not define "trade area."

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.630.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is to clarify RCW 66.24.630 (3)(c).

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

May 8, 2013  
Sharon Foster  
Chairman

#### NEW SECTION

**WAC 314-02-1071 What is "trade area"?** (1) "Trade area" as used in RCW 66.24.630 means an area where there is no spirits retail license within a twenty mile travel distance at the time of license application.

(2) The board will use the following criteria when determining to accept a spirits retail license application where the proposed premises location is less than ten thousand square feet of fully enclosed retail space:

(a) There is no spirits retail license holder or auction title holder within twenty travel miles at the time of license application; and

(b) The board will determine travel distance by a publicly available mapping tool which may be accessed on the board's web site. The web address of this site at the time of rule adoption is <http://wslcb.maps.arcgis.com/home/>.

(3) Former contract liquor stores and title holders by those who purchased a state store at auction are exempt from the ten thousand square foot minimum required by law. Should either choose to locate within an established trade area and they are in compliance with board relocation criteria, they may be issued a license.

(4) The board may make an exception to the twenty mile travel distance for the following:

(a) A spirits retail license application is for a location where the significant mode of travel is other than by automobile; and

(b) A spirits retail application from a tribal entity located on tribal land.

**WSR 13-11-029**  
**PROPOSED RULES**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**

[Filed May 9, 2013, 1:33 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amending WAC 136-15-045 RAP projects in the six-year program,

136-100-020 Adoption of rules, 136-130-050 Supplemental rules in northeast region (NER), 136-161-060 RAP program cycle—Total project rating and priority array, 136-170-030 Terms of CRAB/county contract, 136-180-040 Payment of vouchers, and 136-300-010 Purpose and authority.

Hearing Location(s): County Road Administration Board, 2404 Chandler Court S.W., Suite 280, Olympia, WA 98504-0913, on August 1, 2013, at 2:00 p.m.

Date of Intended Adoption: August 1, 2013.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, e-mail karen@crab.wa.gov, fax (360) 350-6094, by July 26, 2013.

Assistance for Persons with Disabilities: Contact Karen Pendleton by July 26, 2013, TTY (800) 833-6384 or (360) 753-5989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 136-15-045 RAP projects in the six-year program, housekeeping - clarify definition of program items.

WAC 136-100-020 Adoption of rules, housekeeping.

WAC 136-130-050 Supplemental rules in northeast region (NER), housekeeping.

WAC 136-161-060 RAP program cycle—Total project rating and priority array, housekeeping - make project eligibility and six-year program due date consistent.

WAC 136-170-030 Terms of CRAB/county contract, housekeeping - remove obsolete section.

WAC 136-180-040 Payment of vouchers, housekeeping - match current EFT methods payment.

WAC 136-300-010 Purpose and authority, housekeeping - cites the correct RCW.

Statutory Authority for Adoption: Chapter 36.78 RCW.

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

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting: Randy Hart, 2404 Chandler Court S.W., (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., (360) 753-5989.

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

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

May 9, 2013  
Jay P. Weber  
Executive Director

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-15-045 RAP projects in the six-year program.** Each county's six-year transportation program (~~((# each even-numbered year))~~) shall include all projects for which the county (~~((may request))~~) is seeking RATA funds during the succeeding biennium. ((Project cost estimates for prospective RAP projects shall be considered preliminary and subject to revision until a project application is submitted.)) The six-year transportation program may include a general subprogram item of which RAP projects, although not specifically listed, may be a part. A county may only include a proposed RAP project within a subprogram item if:

(1) The project(s) is not rehabilitation or reconstruction in scope;

(2) The specific listing of projects used for support of the general subprogram item was made available to the public at the time of six-year program adoption;

(3) The county provides the county road administration board with the specific project listing in writing, citing the subprogram that includes the specific project.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-100-020 Adoption of rules.** The county road administration board shall adopt rules in accordance with the provisions of the statute for purposes of administering the RAP regarding the following:

(1) Apportionment of rural arterial trust account (RATA) funds to regions.

(2) RAP projects in the six-year program.

(3) Regional prioritization of RAP projects.

(4) Preparation of RAP budget and program.

(5) Eligibility for RATA funds.

(6) Allocation of RATA funds to approved RAP projects.

(7) CRAB/county contract.

(8) Processing of vouchers.

(9) Audit responsibilities.

(10) Functional classification.

(11) Design standards for RAP projects.

(12) Matching requirements.

(13) Joint county RAP/Rural (~~((UAB))~~) TIB projects.

(14) Emergent projects.

(15) Reports to the legislature.

(16) Other matters deemed necessary by the county road administration board.

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

**WAC 136-130-050 Supplemental rules in northeast region (NER).** Each county in the NER may submit projects requesting RATA funds not to exceed twenty-five percent of the forecasted NER biennial apportionment.

Bridge projects may be submitted requesting RATA funds under one of the following conditions:

(1) Bridges must be approved for federal bridge funding and RATA funds shall be used only as a match for such federal funding. Bridges will be ranked for RATA funding using the WSDOT priority list and may be added to the NER Category 1 priority array at any time during the biennium upon approval of the bridge for federal bridge funding.

(2) A stand-alone bridge project may be submitted as an ordinary reconstruction or 3R RAP project provided that its priority rating has been computed by the bridge rating method in the NER RAP rating procedures. Such projects shall not be considered for funding from the bridge reserve described above.

(3) ~~((A))~~ RAP ((project may)) projects that include ((#) bridge ((when)) improvements where the cost of the bridge ((does)) improvements do not exceed twenty percent of the total project cost are not considered bridge projects as set out in this section.

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

**WAC 136-161-060 RAP program cycle—Total project rating and priority array.** County road administration board staff will review all final prospectuses and ensure that:

(1) All necessary information is included;

(2) The project is from the pool of preliminary prospectuses;

(3) The project is eligible for RATA funding;

(4) ~~((The project is on the current, adopted six-year transportation program;~~

~~((5)))~~ The project schedule indicates that preliminary engineering will begin not later than one year from the date of project approval by the county road administration board, and that the construction of the project will begin not later than six years from the date of project approval by the county road administration board; and

~~((6))~~ (5) The total project priority rating is mathematically correct and the visual rating scores determined during the field review are included.

~~((7))~~ (6) Existing and proposed roadway cross sections, project narrative, and preconstruction photos are attached.

After county road administration board staff review, all accepted final prospectuses within each region will be placed in a declining total project rating array. After review by the county road administration board at its next regular meeting, the priority array for each region will be provided to each county in the region. These arrays will be preliminary only and will be provided to the counties to assist them in their internal budgeting and programming. No notations as to whether a particular project will or will not be funded will be included. Projects not adopted in the six-year transportation program by December 31st of the submittal year will be dropped from the array of eligible projects and the revised array will be presented to the county road administration board at its next regularly scheduled meeting.

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

**WAC 136-170-030 Terms of CRAB/county contract.**

(1) ~~((For projects for which RATA funds are allocated before July 1, 1995, the CRAB/county contract shall include, but not be limited to, the following provisions:~~

~~(a) The contract shall be valid and binding (and the county shall be entitled to receive RATA funds) only if such contract is signed and returned to the county road administration board within forty five calendar days of its mailing by the county road administration board.~~

~~(b) The county certifies that it is in compliance with the provisions of chapter 136-150 WAC.~~

~~(c) The project will be constructed in accordance with the scope, design and project limits as described in the final prospectus and in accordance with the plans and specifications approved by the county engineer.~~

~~(d) The county will notify the county road administration board when a construction contract has been awarded and/or when construction has commenced, and when the project has been completed.~~

~~(e) The county road administration board will reimburse counties on the basis of monthly progress payment vouchers received and approved on individual projects in the order in which they are received in the county road administration board office, subject to the availability of RATA funds apportioned to the region or subject to a minimum regional balance determined by the CRABoard for the purposes of cash flow; provided however, that if insufficient RATA funds are available or the legislature fails to appropriate sufficient RATA funds, payment of vouchers may be delayed or denied.~~

~~(f) The county will reimburse the RATA in the event a project postaudit reveals ineligible expenditure of RATA funds.~~

~~(2) For projects for which RATA funds are allocated on or after July 1, 1995,))~~ The CRAB/county contract shall include, but not be limited to, the following provisions:

(a) The contract shall be valid and binding, and the county shall be entitled to receive RATA funding in accordance with the vouchering/payment process as described in chapter 136-180 WAC, only if the contract is properly signed and returned to the county road administration board within forty-five calendar days of its mailing by the county road administration board.

(b) The county certifies that it is in compliance with the provisions of chapter 136-150 WAC.

(c) The project will be constructed in accordance with the scope, design and project limits as described in the final prospectus and in accordance with the plans and specifications approved by the county engineer, and, if applicable, the phased construction plan submitted by the county engineer to the county road administration board.

(d) The county will notify the county road administration board:

(i) If a single construction contract is intended to fully complete the project, at the time of project advertisement, construction contract, and when the project has been completed. Should the small works roster process be utilized, then the initial notice must occur prior to initiating the contractor selection process.

(ii) If county forces are utilized to fully complete the project, at the time of project notice, as required in RCW 36.77.070, commencement of construction activities, and when the project has been completed.

(iii) If the project applies a phased construction methodology, at those times described in a phased construction plan, consistent with subsection ~~((3))~~ (2) of this section.

(e) The county road administration board will reimburse counties on the basis of monthly progress payment vouchers received and approved on individual projects in the order in which they are received in the county road administration board office, subject to the availability of RATA funds apportioned to the region; or subject to a minimum regional balance determined by the CRABoard for the purposes of cash flow; provided however, that if insufficient RATA funds are available or the legislature fails to appropriate sufficient RATA funds, payment of vouchers may be delayed or denied. Counties are ineligible to receive RATA funded construction cost reimbursements prior to satisfaction of the initial project notice requirement described in subsection ~~((2))~~ (1)(d) of this section.

(f) The county will reimburse the RATA in the event a project postaudit reveals ineligible expenditures of RATA funds.

(g) The county may be required to reimburse the RATA in the event of early termination in accordance with the provisions of chapter 136-167 WAC.

(h) The county agrees to amend the contract in cases where:

(i) Additional RATA funds have been requested and approved under chapter 136-165 WAC;

(ii) Other relief from the original scope, design or project limits has been approved by the county road administration board under chapter 136-165 WAC; or

(iii) A project has been terminated without full RATA reimbursement under WAC 136-167-030(2).

(i) The county agrees to provide periodic project development progress reports as requested by the county road administration board.

~~((3))~~ (2) Counties may implement a phased construction methodology in the completion of RATA funded projects. A phased construction methodology is described as the process to implement multiple construction contracts through competitive bid and award, contracts awarded through exercise of the small works roster process, or construction by county forces, or a combination of two or more of these three methods, in order to complete a single RATA funded project. If a county elects to use phased construction methodology, construction of at least one of the project phases must commence by the lapsing date and all remaining phases must commence within two years of commencement of the first phase. In the event the county fails to meet either of these timelines, repayment of expended RATA funds for all phases of the project will be required unless waived by the county road administration board in keeping with the provisions of this section.

(a) In order to be considered phased construction, each phase must:

(i) Be distinct, independent, and nonoverlapping construction activities as to location and type of work;

(ii) Result in separate function and utility;

(iii) Be part of related and sequential construction activities that lead to overall project completion;

(iv) Separately and collectively comply with state laws as to procurement of contract work and use of county forces; and

(v) Not be implemented in a way that would otherwise be considered a split project, as described in WAC 136-170-060, without first obtaining approval as a split project.

(b) In order to satisfy notification requirement of subsection ~~((2))~~ (1)(d) of this section, a phased construction plan must be developed and submitted to the county road administration board at least fifteen calendar days prior to contract bid advertisement, beginning the selection process for a contractor through a small works roster process, or commencement of construction by county forces, whichever occurs first. The phased construction plan must:

(i) Include a description of each construction phase, the contracting method to be employed or that county forces will be used;

(ii) Include an estimated cost and begin and end dates for each construction phase; and

(iii) Describe the relationship between construction phases and ultimate completion of the overall project.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-180-040 Payment of vouchers.** Upon approval of each RAP project voucher by the chair of the county road administration board or his/her designee, it shall be transmitted to the state treasurer ~~((for preparation of the RATA warrant. The RATA warrant will be returned to the county road administration board and transmitted directly to each county submitting a voucher)).~~

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-300-010 Purpose and authority.** RCW ~~((46.68.095(4)))~~ 46.68.090 (2)(i) provides that the county road administration board shall administer the county arterial preservation program (CAPP) and the county arterial preservation account (CAPA) established by this statute. This chapter describes the manner in which the county road administration board will implement the several provisions of the statute.

### WSR 13-11-035

#### PROPOSED RULES

#### GAMBLING COMMISSION

[Filed May 10, 2013, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-062.

Title of Rule and Other Identifying Information: WAC 230-03-060 Fingerprinting of applicants.

Hearing Location(s): Wenatchee Red Lion, 1225 North Wenatchee Avenue, Wenatchee, WA 98801, (509) 663-0711, on August 8 or 9, 2013, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://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: August 8 or 9, 2013.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [Susan.Newer@wsgc.wa.gov](mailto:Susan.Newer@wsgc.wa.gov), fax (360) 486-3625, by August 1, 2013.

Assistance for Persons with Disabilities: Contact Gail Grate by August 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:

- Clarifies for all applicants and licensees those persons who are required to submit fingerprints to us and undergo a national criminal history background check; and
- Outlines which applicants and licensees are not required to submit fingerprints and undergo a national criminal history background check; and
- Outlines persons subject to the national criminal history background check taking into consideration the nature, character, size and scope of the gambling activities; and
- Adds language to clarify we may fingerprint substantial interest holders when we have information they may not be qualified for licensure or to participate in a gambling activity.

Reasons Supporting Proposal: Clarifying in rule who we require fingerprints from and who we do not require fingerprints from based on nature, character, size and scope of the gambling activities as outlined in this proposal meets the

intent of the statute and provides clear guidance to applicants and licensees.

Statutory Authority for Adoption: RCW 9.46.070(7).

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Interim Director, Lacey, (360) 486-3512; 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 has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change does not impose additional costs on any 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.

May 10, 2013

Susan Newer  
Rules Coordinator

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

**WAC 230-03-060 Fingerprinting ((of applicants)).**

~~((Applicants or persons holding a substantial interest may undergo a national criminal history background check, using fingerprints for the following licenses:~~

~~(1) Amusement games for commercial use; Class E and above; and~~

~~(2) Card games; Class E, Class F and house-banked card rooms; and~~

~~(3) Punch boards/pull tabs for commercial stimulant; Class F and above; and~~

~~(4) Manufacturers; Class B and above; and~~

~~(5) Distributors; Class B and above; and~~

~~(6) Gambling service suppliers; and~~

~~(7) Representatives for distributors, manufacturers, gambling service suppliers, and linked bingo prize providers; and~~

~~(8) Managers of commercial gambling operations; and~~

~~(9) Public card room employees; and~~

~~(10) Linked bingo prize providers;)) (1) The following persons must submit fingerprints and undergo a national criminal history background check:~~

~~(a) Substantial interest holders of commercial businesses and charitable or nonprofit organizations who live or have lived out of the state in the last ten years; and~~

~~(b) Card room employees, commercial and nonprofit gambling managers, and manufacturer, distributor, service supplier, and linked bingo prize provider representatives; and~~

~~(c) Any other substantial interest holder when we have information they may not be qualified for licensure or to participate in a gambling activity; and~~

~~(2) Applicants or licensees for the following activities do not need to submit fingerprints: Recreational gaming activities, agricultural fair permits, and Class A commercial amusement games.~~

**WSR 13-11-043**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

(Community Services Division)

[Filed May 13, 2013, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-070.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-492-0030 Who can get WASHCAP?

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>), on June 25, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 26, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 10:00 a.m. on June 25, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 22, 2013, 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 388-492-0030 to correct numbering reference in WAC 388-492-0030 (2)(g) by replacing "WAC 388-400-0040 (14)(b) and (e)" language with "WAC 388-400-0040(12)."

Reasons Supporting Proposal: These changes are necessary to incorporate federal regulations regarding the allowable use of SNAP benefits.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.08.090, 74.08A.903.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.08.090, 74.08A.903.

Rule is necessary because of federal law, Title 7 C.F.R. Part 273.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this 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."

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this 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."

May 13, 2013

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 10-23-115, filed 11/17/10, effective 12/18/10)

**WAC 388-492-0030 Who can get WASHCAP? (1)**

You can get WASHCAP food benefits if:

- (a) You are eligible to receive federal SSI benefits; and
  - (b) You are eighteen years of age or older; and
  - (c) You live alone, or SSA considers you as a single household; or
  - (d) You are age eighteen through twenty-one, living with your parent(s) who do not get Basic Food benefits, and you purchase food separately; or
  - (e) You live with others but buy and cook your food separately from them; and
  - (f) You do not have earned income when you apply for SSI; or
  - (g) You already get WASHCAP food benefits and become employed and receive earned income for less than three consecutive months and are still eligible to receive federal SSI cash benefits; or
  - (h) You already get WASHCAP and move to an institution for ninety days or less.
- (2) You are not eligible for WASHCAP food benefits if:
- (a) You live in an institution;
  - (b) You are under age eighteen;
  - (c) You live with your spouse;
  - (d) You are under age twenty-two and you live with your parent(s) who are getting Basic Food benefits;
  - (e) You begin working after you have been approved for WASHCAP and have earned income for more than three consecutive months;
  - (f) You live with others and do not buy and cook your food separately from them; or
  - (g) You are ineligible for Basic Food benefits under WAC 388-400-0040 ~~((14)(b) and (e))~~ (12).
- (3) We use SSA information to determine your WASHCAP eligibility.

**WSR 13-11-063**

**PROPOSED RULES**

**OLYMPIC COLLEGE**

[Filed May 15, 2013, 2:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-030.

Title of Rule and Other Identifying Information: Withholding services for outstanding student debts.

Hearing Location(s): Olympic College, College Service Center Building, Room 521, 1600 Chester Avenue, Bremerton, WA 98337, on July 2, 2013, at 9:00 a.m.

Date of Intended Adoption: July 2, 2013.

Submit Written Comments to: Thomas Oliver, Olympic College, 1600 Chester Avenue, Bremerton, WA 98337, e-mail [toliver@olympic.edu](mailto:toliver@olympic.edu), fax (360) 475-7505, by June 21, 2013.

Assistance for Persons with Disabilities: Contact Access Services by phone (360) 475-7540 or e-mail [accessservices@olympic.edu](mailto:accessservices@olympic.edu), by June 14, 2013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes will bring chapter 132C-122 WAC up-to-date and consistent with current practices.

Reasons Supporting Proposal: The college is striving to clarify the adjudication process for all areas.

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

Statute Being Implemented: Chapter 28B.50 RCW.

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

Name of Proponent: David C. Mitchell, PhD, President, Olympic College, governmental.

Name of Agency Personnel Responsible for Drafting: Thomas Oliver, 1600 Chester Avenue, Bremerton, WA 98337, (360) 475-7502; Implementation and Enforcement: Janell Whiteley, 1600 Chester Avenue, Bremerton, WA 98337, (360) 475-7504.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no significant economic impact of this proposal.

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

May 15, 2013

Thomas Oliver  
Rules Coordinator

**Chapter 132C-122 WAC**

**WITHHOLDING SERVICES FOR OUTSTANDING  
STUDENT DEBTS**

**NEW SECTION**

**WAC 132C-122-005 Purpose.** The purpose of this policy is to establish clear understanding of the college's responses to outstanding student debt.

**AMENDATORY SECTION** (Amending Order 19, Resolution No. 47-0678, filed 8/7/78)

**WAC 132C-122-010 Policy.** ~~((If any person, including faculty, staff, student or former student, be indebted to the institution for an outstanding overdue debt, the institution need not provide any further services of any kind to such individual, including but not limited to transmitting files, records, transcripts or other services which have been requested by any such person. The institution reserves the right to set off any funds received from an individual against an outstanding overdue debt.))~~ Current and former students are expected to meet their financial obligations to the college. To the extent otherwise permitted by law, in response to a

student's failure to pay a debt owed to the college the college may:

- (1) Initiate collection actions; or
- (2) Make collections from funds received from or on behalf of a student; and/or
- (3) Deny or withhold:
  - (a) Admission to the college; and
  - (b) Registration at the college; and
  - (c) The conferral of degrees or certificates; and
  - (d) The issuance of academic transcripts; and
  - (e) The provision of other services, including refunds.

**AMENDATORY SECTION** (Amending Order 19, Resolution No. 47-0678, filed 8/7/78)

**WAC 132C-122-020 Notification.** ~~((Upon receipt of such a request for services where there is)) (1) Where an outstanding debt ((due the institution from that person)) is owed to the college, the ((institution shall)) college will notify the ((person by first class mail that the services will not be provided since there is an)) individual in writing of the amount of the outstanding debt ((due the institution, and)). Contained within the notification will be further explanation that ((until that debt is satisfied, no such)) services ((as are requested will be provided the individual. When the institution exercises its right of set off, the institution shall notify the person by first class mail of the amount applied and balance due, if any-)) may be withheld until that debt is satisfied, unless it is stayed or discharged in bankruptcy.~~

(2) When the college exercises its right to make collections from funds received from or on behalf of a student, the college shall notify the student of the amount applied and balance due, if any.

(3) These notices shall state that the individual has a right to appeal the decision to withhold services before a person designated by the president of the college if the individual believes that the debt is not owed or has been stayed or discharged in bankruptcy. The notice shall state that the appeal must be made in writing to the vice-president for administrative services within twenty days from the date of the notice.

**AMENDATORY SECTION** (Amending Order 19, Resolution No. 47-0678, filed 8/7/78)

**WAC 132C-122-040 Appeal procedure ((for informal hearing)).** ~~((Upon receipt of a timely request for a hearing, the person designated by the president shall have the records and files of the institution available for review and, at that time, shall hold an informal hearing concerning whether the individual in fact owes or owed any outstanding debts to the institution. After the informal hearing, a decision shall be rendered by the president's designee indicating whether in fact the institution is correct in withholding services or applying set off for the outstanding debt, and if the outstanding debt is in fact owed by the individual involved, the set off shall remain applied and no further services shall be provided. Notification of this shall be sent to the individual within five days after the hearing. Said decision shall constitute an informal proceeding established by the institution pursuant to the Higher Education Administrative Procedure Act~~

~~as defined in RCW 28B.19.110.)) The appeal shall be conducted as a brief adjudicatory proceeding in accordance with RCW 34.05.482 through 34.05.494.~~

#### NEW SECTION

**WAC 132C-122-050 Construction.** Nothing in this policy shall be construed as a limitation upon the college in pursuing any lawful means to collect a debt owed by a non-student.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132C-122-030 Informal hearing notification.

**WSR 13-11-064**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed May 15, 2013, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-08-056.

Title of Rule and Other Identifying Information: WAC 308-12-205 Architect fees.

Hearing Location(s): Department of Licensing (DOL), 405 Black Lake Boulevard, Conference Room 2209, Olympia, WA 98502, on June 25, 2013, at 8:00 a.m.

Date of Intended Adoption: July 26, 2013.

Submit Written Comments to: Jeremiah Wedding, P.O. Box 9045, Olympia, WA 98507, e-mail architects@dol.wa.gov, fax (360) 570-7098, by June 25, 2013.

Assistance for Persons with Disabilities: Contact Autumn Dryden by June 24, 2013, TTY (360) 664-0116 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will extend a fee suspension in an effort to maintain a balanced budget for the architect licensing program. The current temporary suspension expires on July 1, 2013.

Reasons Supporting Proposal: This program is required to be self supporting and operates out of a dedicated fund. Revenue currently being generated to cover the cost of the program is sufficient with the fee suspension in place. This trend is expected to continue over the next couple of years. The suspended fees would have a positive impact on new applicants and existing licensees. This proposed rule amendment is supported by industry and meets exemption criteria outline[d] in Executive Order 10-06.

Statutory Authority for Adoption: RCW 18.220.040.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting: Jeremiah Wedding, Olympia, (360) 664-6652; Implementation and Enforcement: Lorin Doyle, Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The suspension of these fees benefit architect licensees, and does not impose additional fees or penalties.

A cost-benefit analysis is not required under RCW 34.05.328. DOL is not one of the named agencies to which this rule applies. Agencies that are not named can apply this rule to themselves voluntarily. DOL has chosen not to do this.

May 15, 2013  
Damon Monroe  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-205 Architect fees.** (1) Suspension of fees. Effective July 1, (~~2011~~) 2013, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

Title of Fee	Fee
Individuals:	
Examination application	\$50.00
Reciprocity application	250.00
Initial licensure	75.00
License renewal (2 years)	75.00
Late renewal penalty	25.00
Duplicate license	15.00
Business entities:	
Certificate of authorization	100.00
Certificate of authorization renewal	50.00

The fees set forth in this section shall revert back to the fee amounts shown in subsection (2) of this section on July 1, (~~2013~~) 2015.

(2) The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Examination application	\$100.00
Reciprocity application	390.00
Initial licensure	99.00
License renewal (2 years)	99.00
Late renewal penalty	33.00
Duplicate license	15.00
Business entities:	
Certificate of authorization	278.00
Certificate of authorization renewal	139.00

**WSR 13-11-068**

**WITHDRAWAL OF PROPOSED RULES  
SEATTLE COMMUNITY COLLEGES**

[Filed May 15, 2013, 4:03 p.m.]

The Seattle Community College District is withdrawing WSR 13-09-007 filed on April 5, 2013. We will be refiled at a later date.

Jill Wakefield  
Chancellor

**WSR 13-11-069**

**PROPOSED RULES  
HEALTH CARE AUTHORITY**

[Filed May 16, 2013, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-16-100.

Title of Rule and Other Identifying Information: Amending chapter 182-532 WAC, Reproductive health/family planning only/TAKE CHARGE and related sections, WAC 182-531-1550 Sterilization physician-related services, 182-531-0150 Noncovered physician-related and health care professional services—General and administrative, and 182-531-0200 Physician-related and health care professional services requiring prior authorization.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on June 25, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 26, 2013.

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](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on June 25, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 17, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kellyrichters@hca.wa.gov](mailto:kellyrichters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules add language to clarify, update and ensure clear and consistent policies for family planning providers, and amend TAKE CHARGE rule sections on eligibility (WAC 182-532-700 through 182-532-790) so they comply with the new federal waiver for the TAKE CHARGE medicaid program. Changes to other sections in chapter 182-532 WAC include:

- Adding mammograms for women thirty-nine years of age and younger with prior authorization and mammograms for men when medically necessary in reproductive health services.
- Changing the time providers must forward the client's service card and related information to another client-requested address from seven to five days, to be consistent with the TAKE CHARGE agreement.



- Reflecting the discontinuation of payment for application assistance in TAKE CHARGE, related to budgetary decisions.
- Making housekeeping changes due to the HCA merger.

The related sterilization section, WAC 182-531-1550, is amended by: Adding a requirement for national board certification for becoming an approved hysteroscopic sterilization provider; clarifying other rule requirements; moving hysterectomy requirements from WAC 182-531-1550 to 182-531-0150 and 182-531-0200 for a more suitable fit; and making housekeeping changes due to the HCA merger.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 74.09.520, 74.09.657, 74.09.659, 74.09.800.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katey Simetra, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Maureen Considine, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1652.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and has concluded that they do not impose more than minor costs for affected small businesses and the joint administrative rules review committee has not requested the preparation of a small business economic impact statement.

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.

May 16, 2013  
Kevin M. Sullivan  
Rules Coordinator

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

**WAC 182-531-0150 Noncovered physician-related and health care professional services—General and administrative.** (1) Except as provided in WAC 388-531-0100 and subsection (2) of this section, the department does not cover the following:

- (a) Acupuncture, massage, or massage therapy;
- (b) Any service specifically excluded by statute;
- (c) Care, testing, or treatment of infertility, frigidity, or impotency. This includes procedures for donor ovum, sperm, womb, and reversal of vasectomy or tubal ligation;
- (d) Hysterectomy performed solely for the purpose of sterilization;
- (e) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to trauma, birth defect, or illness;
- ((+)) (f) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an indi-

vidual client's condition justify a determination of medical necessity under WAC 388-501-0165;

((+)) (g) Hair transplantation;

((+)) (h) Marital counseling or sex therapy;

((+)) (i) More costly services when the department determines that less costly, equally effective services are available;

((+)) (j) Vision-related services as follows:

(i) Services for cosmetic purposes only;

(ii) Group vision screening for eyeglasses; and

(iii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery.

((+)) (k) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 388-531-1750;

((+)) (l) Physician-supplied medication, except those drugs administered by the physician in the physician's office;

((+)) (m) Physical examinations or routine checkups, except as provided in WAC 388-531-0100;

((+)) (n) Foot care, unless the client meets criteria and conditions outlined in WAC 388-531-1300, as follows:

(i) Routine foot care, such as but not limited to:

(A) Treatment of tinea pedis;

(B) Cutting or removing warts, corns and calluses; and

(C) Trimming, cutting, clipping, or debriding of nails.

(ii) Nonroutine foot care, such as, but not limited to treatment of:

(A) Flat feet;

(B) High arches (cavus foot);

(C) Onychomycosis;

(D) Bunions and tailor's bunion (hallux valgus);

(E) Hallux malleus;

(F) Equinus deformity of foot, acquired;

(G) Cavovarus deformity, acquired;

(H) Adult acquired flatfoot (metatarsus adductus or pes planus);

(I) Hallux limitus.

(iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;

((+)) (o) Except as provided in WAC 388-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services.

((+)) (p) Nonmedical equipment;

((+)) (q) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas;

((+)) (r) Bilateral cochlear implantation; and

((+)) (s) Routine or nonemergency medical and surgical dental services provided by a doctor of dental medicine or dental surgery for clients twenty one years of age and older, except for clients of the division of developmental disabilities.

(2) The department covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

- (a) The EPSDT program;
- (b) A medicaid program for qualified **medicare** beneficiaries (QMBs); or
- (c) A waiver program.

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

**WAC 182-531-0200 Physician-related and health care professional services requiring prior authorization.**

(1) The department requires **prior authorization** for certain services. Prior authorization includes **expedited prior authorization (EPA)** and **limitation extension (LE)**. See WAC 388-501-0165.

(2) The EPA process is designed to eliminate the need for telephone prior authorization for selected admissions and procedures.

(a) The provider must create an authorization number using the process explained in the department's physician-related billing instructions.

(b) Upon request, the provider must provide supporting clinical documentation to the department showing how the authorization number was created.

(c) Selected nonemergency admissions to contract hospitals require EPA. These are identified in the department billing instructions.

(d) Procedures allowing expedited prior authorization include, but are not limited to, the following:

- (i) Reduction mammoplasties/mastectomy for gynecostasia;
- (ii) Strabismus surgery for clients eighteen years of age and older;
- (iii) Meningococcal vaccine;
- (iv) Placement of drug eluting stent and device;
- (v) Cochlear implants for clients twenty years of age and younger;
- (vi) Hyperbaric oxygen therapy;
- (vii) Visual exam/refraction for clients twenty-one years of age and older;
- (viii) Blepharoplasties; and
- (ix) Neuropsychological testing for clients sixteen years of age and older.

(3) The department evaluates new technologies under the procedures in WAC 388-531-0550. These require prior authorization.

(4) Prior authorization is required for the following:

- (a) Abdominoplasty;
- (b) All inpatient hospital stays for **acute physical medicine and rehabilitation (PM&R)**;
- (c) Unilateral cochlear implants for clients twenty years of age and younger (refer to WAC 388-531-0375);
- (d) Diagnosis and treatment of eating disorders for clients twenty-one years of age and older;
- (e) Osteopathic manipulative therapy in excess of the department's published limits;
- (f) Panniculectomy;
- (g) Bariatric surgery (see WAC 388-531-1600); and
- (h) Vagus nerve stimulator insertion, which also:
- (i) For coverage, must be performed in an inpatient or outpatient hospital facility; and

(ii) For reimbursement, must have the invoice attached to the claim.

(i) Osseointegrated/bone anchored hearing aids (BAHA) for clients twenty years of age and younger;

(j) Removal or repair of previously implanted BAHA or cochlear device for clients twenty one years of age and older when medically necessary.

(5) All hysterectomies performed for medical reasons may require prior authorization, as explained in subsection (2) of this section.

(a) Hysterectomies may be performed without prior authorization in either of the following circumstances:

(i) The client has been diagnosed with cancer(s) of the female reproductive organs; and/or

(ii) A hysterectomy is needed due to trauma.

(b) The agency reimburses all attending providers for a hysterectomy procedure only when the provider submits an accurately completed agency-approved consent form with the claim for reimbursement.

(6) The department may require a second opinion and/or consultation before authorizing any elective surgical procedure.

~~((6))~~ (7) Children six years of age and younger do not require authorization for hospitalization.

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

**WAC 182-531-1550 Sterilization physician-related services.**

(1) For purposes of this section, sterilization is any medical procedure, treatment, or operation for the purpose of rendering a client permanently incapable of reproducing. ~~((A hysterectomy is a surgical procedure or operation for the purpose of removing the uterus.))~~

Hysterectomy results in sterilization ~~((, but the department does not cover hysterectomy performed))~~ and is not covered by the medicaid agency solely for that purpose. ~~((Both hysterectomy and sterilization procedures require the use of specific consent forms. See subsections (10), (11) and (12) of this section for additional coverage criteria for hysteroscopic sterilizations.))~~ (See WAC 182-531-0150 and 182-531-0200 for more information about hysterectomies.)

**STERILIZATION**

(2) The ~~((department))~~ medicaid agency covers sterilization when all of the following apply:

(a) The client is at least eighteen years of age at the time an agency-approved consent form is signed;

(b) The client is a mentally competent individual;

(c) The client participates in a medical assistance program (see WAC 182-501-0060);

(d) The client has voluntarily given informed consent ((in accordance with all the requirements defined in this subsection)); and

~~((d))~~ At least thirty days, but not more than one hundred eighty days, have passed between the date the client gave informed consent and the date of the sterilization.

~~((3))~~ (e) The date the client signed a sterilization consent is at least thirty days and not more than one hundred eighty days before the date of the sterilization procedure.

(3) Any medicaid provider who is licensed to do sterilizations within their scope of practice may provide vasectomies and tubal ligations to any medicaid client. (See subsections (10), (11), and (12) of this section for additional qualifications of providers performing hysteroscopic sterilizations.)

(4) The ~~((department does not require the thirty-day waiting period, but does))~~ medicaid agency requires at least a seventy-two hour waiting period ~~((;))~~ rather than the usual thirty-day waiting period for sterilization in either of the following circumstances:

(a) At the time of a premature delivery ~~((;))~~ when the client gave consent at least thirty days before the expected date of delivery. (The expected date of delivery must be documented on the consent form ~~((;))~~.)

(b) For emergency abdominal surgery ~~((;))~~. (The nature of the emergency must be described on the consent form.)

~~((4))~~ (5) The ~~((department))~~ medicaid agency waives the thirty-day consent waiting period for sterilization when the client requests that sterilization be performed at the time of delivery ~~((;))~~ and completes a sterilization consent form. One of the following circumstances must apply:

(a) The client became eligible for medical assistance during the last month of pregnancy;

(b) The client did not obtain medical care until the last month of pregnancy; or

(c) The client was a substance abuser during pregnancy, but is not using alcohol or illegal drugs at the time of delivery.

~~((5))~~ (6) The ~~((department))~~ medicaid agency does not accept informed consent obtained when the client is ~~((in any of the following conditions))~~:

(a) In labor or childbirth;

(b) In the process of seeking to obtain or obtaining an abortion; or

(c) Under the influence of alcohol or other substances, including pain medications for labor and delivery, that affects the client's state of awareness.

~~((6))~~ (7) The ~~((department))~~ medicaid agency has certain consent requirements that the provider must meet before the ~~((department))~~ agency reimburses sterilization of ~~((a mentally incompetent or))~~ an institutionalized client or a client with mental incompetence. The ~~((department))~~ agency requires both of the following:

(a) A court order, which includes both a statement that the client is to be sterilized, and the name of the client's legal guardian who will be giving consent for the sterilization; and

(b) A sterilization consent form signed by the legal guardian, sent to the ~~((department))~~ agency at least thirty days ~~((prior to))~~ before the procedure.

~~((7))~~ (8) The ~~((department))~~ medicaid agency reimburses epidural anesthesia in excess of the six-hour limit for ~~((sterilization procedures that are performed in conjunction with or immediately following a delivery. The provider cannot bill separately for BAUs for the sterilization procedure. The department determines total billable units by:~~

(a) Adding the time for the sterilization procedure to the time for the delivery; and

(b) ~~Determining the total billable units by adding together the delivery BAUs, the delivery time, and the sterilization time.~~

(8) The physician identified in the "consent to sterilization" section of the DSHS-approved sterilization consent form must be the same physician who completes the "physician's statement" section and performs the sterilization procedure. If a different physician performs the sterilization procedure, the client must sign and date a new consent form at the time of the procedure that indicates the name of the physician performing the operation under the "consent for sterilization" section. This modified consent must be attached to the original consent form when the provider bills the department) deliveries if sterilization procedures are performed in conjunction with or immediately following a delivery.

(a) For reimbursement, anesthesia time for sterilization is added to the time for the delivery when the two procedures are performed during the same operative session.

(b) If the sterilization and delivery are performed during different operative sessions, the anesthesia time is calculated separately.

(9) The ~~((department))~~ medicaid agency reimburses all attending providers for the sterilization procedure only when the provider submits an ~~((appropriate, completed DSHS-approved))~~ agency-approved and complete consent form with the claim for reimbursement. (See subsections (10), (11), and (12) of this section for additional coverage criteria for hysteroscopic sterilizations.)

(a) The physician must complete and sign the physician statement on the consent form within thirty days of the sterilization procedure.

(b) The ~~((department))~~ agency reimburses attending providers after the procedure is completed.

#### HYSTEROSCOPIC STERILIZATIONS

(10) The ~~((department))~~ medicaid agency pays for hysteroscopic sterilizations when the following additional criteria are met:

(a) A ~~((department-approved))~~ device covered by the agency is used ~~((;))~~.

(b) The procedure is predominately performed in a clinical setting, such as a physician's office, without general anesthesia and without the use of a surgical suite; and is covered according to the corresponding ~~((department))~~ agency fee schedule ~~((;))~~.

(c) If determining that it is medically necessary to perform the procedure in an inpatient rather than outpatient setting, a provider must submit clinical notes with the claim, documenting the medical necessity.

~~((d))~~ The client provides informed consent for the procedure ~~((in accordance with this section; and (d))~~.

~~((e))~~ The hysteroscopic sterilization is performed by ~~((a department-approved))~~ an approved provider who:

(i) Has a core provider agreement with the ~~((department))~~ agency;

(ii) Is nationally board certified in obstetrics and gynecology (OB-GYN);

(iii) Is privileged at a licensed hospital to do hysteroscopies;

(iv) Has successfully completed the manufacturer's training for the device covered by the agency;

(v) Has successfully performed a minimum of twenty hysteroscopies; and

(vi) Has established screening and follow-up protocols for clients being considered for hysteroscopic sterilization.

~~((12)) (11) To become ((a department approved provider)) approved for hysteroscopic sterilizations, interested providers must send the ((department)) medicaid agency-approved vendor, identified in the agency's billing instructions, the following:~~

- (a) Documentation of successful completion of the manufacturer's training;
- (b) Documentation demonstrating privilege at a licensed hospital to perform hysteroscopies;
- (c) Documentation attesting to having successfully performed twenty or more hysteroscopies; ~~((and))~~
- (d) Evidence of valid National Board Certification; and
- (e) Office protocols for screening and follow-up.

~~((HYSTERECTOMY~~

~~(13) Hysterectomies performed for medical reasons may require expedited prior authorization as explained in WAC 388-531-0200(2).~~

~~(14) The department reimburses hysterectomy without prior authorization in either of the following circumstances:~~

- ~~(a) The client has been diagnosed with cancer(s) of the female reproductive organs; and/or~~
- ~~(b) The client is forty-six years of age or older.~~

~~(15) The department reimburses all attending providers for the hysterectomy procedure only when the provider submits an appropriate, completed DSHS approved consent form with the claim for reimbursement. If a prior authorization number is necessary for the procedure, it must be on the claim. The department reimburses after the procedure is completed.) (12) The provider will not be paid to perform the hysteroscopic procedure until the medicaid agency sends written approval to the provider.~~

~~((REPRODUCTIVE HEALTH SERVICES))  
DEFINITIONS~~

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

**WAC 182-532-001 Reproductive health services—**  
~~((Purpose)) **Definitions.** ((The department of social and health services (DSHS) defines reproductive health services as those services that:~~

- ~~(1) Assist clients to avoid illness, disease, and disability related to reproductive health;~~
  - ~~(2) Provide related and appropriate, medically necessary care when needed; and~~
  - ~~(3) Assist clients to make informed decisions about using medically safe and effective methods of family planning.)~~
- The following definitions and those found in WAC 182-500-0005 apply to this chapter.

**340B dispensing fee** - The medicaid agency's established fee paid to a registered and medicaid-participating 340B drug program provider under the public health service (PHS) act for expenses involved in acquiring, storing and dispensing prescription drugs or drug-containing devices (see WAC 182-530-7900). A dispensing fee is not paid for non-drug items, devices or supplies (see WAC 182-530-7050).

**"Complication"** - A condition occurring subsequent to and directly arising from the family planning services received under the rules of this chapter.

**"Comprehensive prevention visit for family planning"** - For the purposes of this program, a comprehensive, preventive, contraceptive visit that includes evaluation and management of an individual, such as: Age appropriate history, examination, counseling/anticipatory guidance, risk factor reduction interventions, and labs and diagnostic procedures that are covered under the client's respective medicaid agency program. These services may only be provided by and paid to TAKE CHARGE providers.

**"Contraception"** - Prevention of pregnancy through the use of contraceptive methods.

**"Contraceptive"** - A device, drug, product, method, or surgical intervention used to prevent pregnancy.

**"Delayed pelvic protocol"** - The practice of allowing a woman to postpone a pelvic exam during a contraceptive visit to facilitate the start or continuation of a hormonal contraceptive method.

**"Education, counseling and risk reduction intervention (ECRR)"** - Client-centered education and counseling services designed to strengthen decision-making skills and support a client's safe and effective use of a chosen contraceptive method. For women, ECRR is part of the comprehensive prevention visit for family planning. For men, ECRR is a stand-alone service for those men who seek family planning services and whose partners are at moderate to high risk of unintended pregnancy.

**"Family planning only program"** - The program that provides an additional ten months of family planning services to eligible women at the end of their pregnancy. This benefit follows the sixty-day postpregnancy coverage for women who received medical assistance benefits during the pregnancy.

**"Family planning provider"** - For this chapter, a physician or physician's assistant, advanced registered nurse practitioner (ARNP), or clinic that, in addition to meeting requirements in chapter 182-502 WAC, is approved by the medicaid agency to provide family planning services to eligible clients as described in this chapter.

**"Family planning services"** - Medically safe and effective medical care, educational services, and/or contraceptives that enable individuals to plan and space the number of their children and avoid unintended pregnancies.

**"Medicaid agency"** - Health care authority.

**"Natural family planning" (also known as fertility awareness method)** - Methods to identify the fertile days of the menstrual cycle and avoid unintended pregnancies, such as observing, recording, and interpreting the natural signs and symptoms associated with the menstrual cycle.

**"Over-the-counter (OTC)"** - Drugs that do not require a prescription before they can be sold or dispensed. (See WAC 388-530-1050.)

**"Sexually transmitted infection (STD)"** - A disease or infection acquired as a result of sexual contact.

**"TAKE CHARGE"** - The medicaid agency's demonstration and research program approved by the federal government under a medicaid program waiver to provide family planning services.

**"TAKE CHARGE provider"** - A family planning provider who has a TAKE CHARGE agreement to provide TAKE CHARGE family planning services to eligible clients under the terms of the federally approved medicaid waiver for the TAKE CHARGE program. (See WAC 182-532-730 for provider requirements.)

## REPRODUCTIVE HEALTH SERVICES

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

**WAC 182-532-050 Reproductive health services—**  
**((Definitions)) Purpose.** ((The following definitions and those found in WAC 388-500-005, Medical definitions, apply to this chapter.

**"Complication"**—A condition occurring subsequent to and directly arising from the family planning services received under the rules of this chapter.

**"Comprehensive family planning preventive medicine visit"**—For the purposes of this program, is a comprehensive, preventive, contraceptive visit which includes:

- An age and gender appropriate history and examination offered to female medicaid clients who are at risk for unintended pregnancies;

- Education and counseling for risk reduction (ECRR) regarding the prevention of unintended pregnancy; and

- For family planning only and TAKE CHARGE clients, routine gonorrhea and chlamydia testing for women thirteen through twenty-five years of age only.

This preventive visit may be billed only once every twelve months, per client, by a department contracted TAKE CHARGE provider and only for female clients needing contraception.

**"Contraception"**—Preventing pregnancy through the use of contraceptives.

**"Contraceptive"**—A device, drug, product, method, or surgical intervention used to prevent pregnancy.

**"Delayed pelvic protocol"**—The practice of allowing a woman to postpone a pelvic exam during a contraceptive visit to facilitate initiation or continuation of a hormonal contraceptive method.

**"Department"**—The department of social and health services.

**"Department approved family planning provider"**—A physician, advanced registered nurse practitioner (ARNP), or clinic that has:

- Agreed to the requirements of WAC 388-532-110;
- Signed a core provider agreement with the department;
- Been assigned a unique family planning provider number by the department; and
- Agreed to bill for family planning laboratory services provided to clients enrolled in a department managed care plan through an independent laboratory certified through the Clinical Laboratory Improvements Act (CLIA).

**"Family planning services"**—Medically safe and effective medical care, educational services, and/or contraceptives that enable individuals to plan and space the number of children and avoid unintended pregnancies.

**"Medical identification card"**—The document the department uses to identify a client's eligibility for a medical program.

**"Natural family planning"**—(Also known as fertility awareness method) means methods such as observing, recording, and interpreting the natural signs and symptoms associated with the menstrual cycle to identify the fertile days of the menstrual cycle and avoid unintended pregnancies.

**"Over-the-counter (OTC)"**—See WAC 388-530-1050 for definition.

**"Sexually transmitted disease infection (STD-I)"**—A disease or infection acquired as a result of sexual contact.)) The medicaid agency defines reproductive health services as those services that:

(1) Assist clients to avoid illness, disease, and disability related to reproductive health;

(2) Provide related, appropriate, and medically necessary care when needed; and

(3) Assist clients to make informed decisions about using medically safe and effective methods of family planning.

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

**WAC 182-532-100 Reproductive health services—**  
**Client eligibility.** (1) The ((department)) medicaid agency covers limited reproductive health services for clients eligible for the following:

(a) ((State)) Children's health insurance program ((SCHIP)) CHIP;

(b) Categorically needy program (CNP);

(c) ((General assistance unemployable (GAU) program;)) Medical care services (MCS) program;

(d) Limited casualty program-medically needy program (LCP-MNP); and

(e) Alcohol and Drug Abuse Treatment and Support Act (ADATSA) services.

(2) Clients enrolled in a ((department)) medicaid agency contracted managed care organization (MCO) may self-refer outside their MCO for family planning services (excluding sterilizations for clients twenty-one years of age or older), abortions, and ((STD-I)) sexually transmitted infection (STI) services ((t)). These clients may seek services from any of the following:

(a) A ((department approved)) medicaid agency approved family planning provider;

(b) A ((department contracted)) medicaid agency contracted local health department/((STD-I)) STI clinic;

(c) A ((department contracted)) medicaid agency contracted provider for abortion services; or

(d) A ((department contracted)) medicaid agency contracted pharmacy ((for:

(i) Over-the-counter contraceptive drugs and supplies, including emergency contraception; and

(ii) Contraceptives and STD-I related prescriptions from a department approved family planning provider or department contracted local health department/STD-I clinic)).

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

**WAC 182-532-110 Reproductive health services—Provider requirements.** To be paid by the ~~((department))~~ medicaid agency for reproductive health services provided to eligible clients, ~~((physicians, ARNPs, licensed midwives, and department-approved))~~ family planning providers, including licensed midwives, must:

(1) Meet the requirements in chapter ~~((388-502))~~ 182-502 WAC~~((Administration of medical programs—Provider rules));~~

(2) Provide only those services that are within the scope of their licenses;

(3) Comply with the required general medicaid agency and reproductive health provider policies, procedures, and administrative practices as detailed in the agency's billing instructions;

(4) Educate clients on Food and Drug Administration (FDA)-approved prescription birth control methods ~~((and))~~, over-the-counter (OTC) birth control drugs and supplies, and related medical services;

~~((4))~~ (5) Provide medical services related to FDA-approved prescription birth control methods, and OTC birth control drugs and supplies upon request; and

~~((5))~~ (6) Supply or prescribe FDA-approved prescription birth control methods, and OTC birth control drugs and supplies upon request;

(6) Refer the client to an appropriate provider if unable to meet the requirements of subsections (3), (4), and (5) of this section~~[-] and~~

(7) Refer the client to available and affordable nonfamily planning primary care services, as needed).

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

**WAC 182-532-120 Reproductive health—Covered ~~((services))~~ yearly exams for women.** ~~((In addition to those services listed in WAC 388-531-0100 Physician-related services, the department covers the following reproductive health services:~~

**(1) Services for women:**

(a) The department covers one of the following per client, per year as medically necessary:

(i) ~~A gynecological examination, billed by a provider other than a TAKE CHARGE provider, which may include a cervical and vaginal cancer screening examination when medically necessary; or~~

(ii) ~~One comprehensive family planning preventive medicine visit, billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year. The comprehensive family planning preventive medicine visit must be:~~

~~(A) Provided by one or more of the following TAKE CHARGE trained providers:~~

~~(I) A physician or physician's assistant (PA);~~

~~(II) An advanced registered nurse practitioner (ARNP);~~

~~or~~

~~(III) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the clinicians listed in (I) and (II) in subsection (1) of this section.~~

~~(B) Documented in the client's chart with detailed information that allows for a well-informed follow-up visit.~~

~~(b) Food and Drug Administration (FDA)-approved prescription contraception methods as identified in chapter 388-530 WAC, Pharmacy services.~~

~~(c) Over the counter (OTC) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety as described in chapter 388-530 WAC, Prescription drugs (outpatient).~~

~~(d) Sterilization procedures that meet the requirements of WAC 388-531-1550, if:~~

~~(i) Requested by the client; and~~

~~(ii) Performed in an appropriate setting for the procedure.~~

~~(e) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures.~~

~~(f) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.~~

~~(g) Mammograms for clients forty years of age and older, once per year;~~

~~(h) Colposcopy and related medically necessary follow-up services;~~

~~(i) Maternity-related services as described in chapter 388-533 WAC; and~~

~~(j) Abortion.~~

**(2) Services for men:**

~~(a) Office visits where the primary focus and diagnosis is contraceptive management and/or there is a medical concern;~~

~~(b) Over the counter (OTC) contraceptives, drugs and supplies (as described in chapter 388-530 WAC, Prescription drugs (outpatient));~~

~~(c) Sterilization procedures that meet the requirements of WAC 388-531-1550(1), if:~~

~~(i) Requested by the client; and~~

~~(ii) Performed in an appropriate setting for the procedure.~~

~~(d) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures.~~

~~(e) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.~~

~~(f) Prostate cancer screenings for men, once per year, when medically necessary.)~~

~~(1) Along with services listed in WAC 182-531-0100, the medicaid agency covers one of the following yearly exams per client per year:~~

~~(a) A cervical, vaginal, and breast cancer screening exam; or~~

~~(b) A comprehensive prevention visit for family planning. (Under a delayed pelvic protocol, the comprehensive prevention visit for family planning may be split into two visits, per client, per year.)~~

~~(2) The cervical, vaginal, and breast cancer screening examination:~~

(a) Must follow the guidelines of a nationally recognized protocol; and

(b) May be billed by a provider other than a TAKE CHARGE provider.

(3) The comprehensive prevention visit for family planning:

(a) Must be provided by one or more qualified TAKE CHARGE providers. (See WAC 182-532-730.)

(b) Must include:

(i) A clinical breast examination and pelvic examination; and

(ii) Client-centered counseling that incorporates risk factor reduction for unintended pregnancy and anticipatory guidance about the advantages and disadvantages of all contraceptive methods.

(c) May include a pap smear according to current, nationally recognized clinical guidelines.

(d) Must be documented in the client's chart with detailed information that allows for a well-informed follow-up visit.

(e) Must be billed by a TAKE CHARGE provider only.

#### NEW SECTION

**WAC 182-532-123 Reproductive health—Other covered services for women.** Other reproductive health services covered for women include:

(1) Office visits when medically necessary;

(2) Food and Drug Administration (FDA)-approved prescription and nonprescription contraceptive methods, as identified in chapter 182-530 WAC;

(3) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies, as described in chapter 182-530 WAC;

(4) Sterilization procedures that meet the requirements of WAC 182-531-1550 if requested by the client and performed in an appropriate setting for the procedures;

(5) Screening and treatment for sexually transmitted infections (STI), including lab tests and procedures;

(6) Education and supplies for FDA-approved contraceptives, natural family planning, and abstinence;

(7) Mammograms for clients forty years of age and older once per year, and for clients thirty-nine years of age and younger with prior authorization;

(8) Colposcopy and related medically necessary follow-up services;

(9) Maternity-related services as described in chapter 182-533 WAC; and

(10) Abortion.

#### NEW SECTION

**WAC 182-532-125 Reproductive health—Covered services for men.** In addition to those services listed in WAC 182-531-0100, the medicaid agency covers the following reproductive health services for men:

(1) Office visits where there is a medical concern, including contraceptive and vasectomy counseling;

(2) Over-the-counter (OTC) contraceptive supplies as described in chapter 182-530 WAC;

(3) Sterilization procedures that meet the requirements of WAC 182-531-1550 if requested by the client and performed in an appropriate setting for the procedures;

(4) Screening and treatment for sexually transmitted infections (STI), including lab tests and procedures;

(5) Education and supplies for FDA-approved contraceptives, natural family planning, and abstinence;

(6) Prostate cancer screenings for men, once per year, when medically necessary; and

(7) Diagnostic mammograms for men when medically necessary.

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

**WAC 182-532-130 Reproductive health—Noncovered services.** Noncovered reproductive health services are ~~((the same as shown))~~ described in WAC ((388-531-0150, Noncovered physician-related services—General and administrative)) 182-531-0150.

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

**WAC 182-532-140 Reproductive health services—Reimbursement and payment limitations.** (1) ~~The ((department)) medicaid agency~~ reimburses providers for covered reproductive health services using the ((department's)) medicaid agency's published fee schedules.

~~(2) ((When a client enrolled in a department approved managed care plan self-refers outside the plan to either a department approved family planning provider or a department contracted local health department STD-I clinic for family planning or STD-I services, all laboratory services must be billed through the family planning provider.~~

~~(3) When a client enrolled in a department managed care plan obtains family planning or STD-I services from a department approved family planning provider or a department contracted local health department/STD-I clinic which has a contract with the managed care plan, those services must be billed directly to the managed care plan.)~~ Family planning pharmacy services, family planning lab services, and sterilization services are reimbursed by the medicaid agency under the rules and fee schedules applicable to these specific programs.

(3) The medicaid agency pays a dispensing fee only for contraceptive drugs that are purchased through the 340B program of the Public Health Service Act. (See chapter 182-530 WAC.)

(4) Family planning providers under contract with the agency's managed care plans must directly bill the plans for family planning or STI services received by clients enrolled in the plan.

(5) Family planning providers not under contract with the agency's managed care plans must bill using fee for service when providing services to managed care clients who self-refer outside their plans.

(6) Family planning providers or agency-contracted local health department STI clinics under contract with the agency's managed care plans must bill the plans for lab services provided to medicaid managed care clients.

(7) Family planning providers or agency-contracted local health department STI clinics not under contract with the agency's managed care plans must pay a lab directly for services provided to clients who self-refer outside of their managed care plan. Providers then must bill the medicaid agency for reimbursement for lab services.

(a) Labs must be certified through the Clinical Laboratory Improvements Act (CLIA).

(b) Documentation of current CLIA certification must be kept on file.

(8) Under WAC 182-501-0200, the medicaid agency requires a provider to seek timely reimbursement from a third party when a client has available third-party resources. The exceptions to this requirement are described under WAC 182-501-0200 (2) and (3).

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

**WAC 182-532-500 Family planning only program—**

**Purpose.** (1) The purpose of the family planning only program is to provide family planning services ((at the end of a pregnancy to women who received medical assistance benefits during their pregnancy. The primary goal of the family planning only program is to prevent an unintended, subsequent pregnancy)) to:

(a) Increase the healthy intervals between pregnancies; and

(b) Reduce unintended pregnancies in women who received medical assistance benefits while pregnant.

(2) Women receive ((this benefit)) these services automatically, regardless of how or when the pregnancy ends. This ten-month benefit follows the ((department's)) medicaid agency's sixty-day postpregnancy coverage.

(3) Men are not eligible for the family planning only program.

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

**WAC 182-532-510 Family planning only program—**

**Client eligibility.** A woman is eligible for family planning only services if:

(1) She received medical assistance benefits during her pregnancy; or

(2) She is determined eligible for a retroactive period ((as defined in WAC 388-500-0005)) covering the end of the pregnancy.

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

**WAC 182-532-520 Family planning only program—**

**Provider requirements.** To be reimbursed by the ((department)) medicaid agency for services provided to clients eligible for the family planning only program, ((physicians, ARNPs, and/or department approved)) family planning providers must:

(1) Meet the requirements in chapter ((388-502)) 182-502 WAC((, Administration of medical programs—Provider rules));

(2) Provide only those services that are within the scope of their licenses;

(3) Comply with the required general medicaid agency and family planning only provider policies, procedures, and administrative practices as detailed in the agency's billing instructions;

(4) Educate clients on Food and Drug Administration (FDA)-approved prescription birth control methods ((and)), over-the-counter (OTC) birth control drugs and supplies, and related medical services;

~~((4))~~ (5) Provide medical services related to FDA-approved prescription birth control methods, and OTC birth control drugs and supplies ((upon request)) as medically necessary;

~~((5))~~ (6) Supply or prescribe FDA-approved prescription birth control methods, and OTC birth control drugs and supplies ((upon request)) as medically appropriate; and

~~((6) Refer the client to an appropriate provider if unable to meet the requirements of subsections (3), (4), and (5) of this section; and))~~

(7) Refer the client to available and affordable nonfamily planning primary care services, as needed.

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

**WAC 182-532-530 Family planning only program—**

**Covered ((services)) yearly exams.** ((The department covers the following services under the family planning only program:

(1) One of the following, per client, per year as medically necessary:

(a) One comprehensive family planning preventive medicine visit billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year. The comprehensive family planning preventive medicine visit must be:

~~(I) Provided by one or more of the following TAKE CHARGE trained providers:~~

~~(A) Physician or physician's assistant (PA);~~

~~(B) An advanced registered nurse practitioner (ARNP);~~

~~or~~

~~(C) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the clinicians listed in subsection (A) and (B) of this section.~~

~~(II) Documented in the client's chart with detailed information that allows for a well-informed follow-up visit; or~~

~~(b) A gynecological examination, billed by a provider other than a TAKE CHARGE provider, which may include a cervical and vaginal cancer screening examination, one per year when it is:~~

~~(i) Provided according to the current standard of care; and~~

~~(ii) Conducted at the time of an office visit with a primary focus and diagnosis of family planning.~~

(2) An office visit directly related to a family planning problem, when medically necessary.



~~(3) Food and Drug Administration (FDA) approved prescription contraception methods meeting the requirements of chapter 388-530 WAC, Prescription drugs (outpatient).~~

~~(4) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety (as described in chapter 388-530 WAC, Prescription drugs (outpatient)).~~

~~(5) Sterilization procedure that meets the requirements of WAC 388-531-1550, if it is:~~

~~(a) Requested by the client; and~~

~~(b) Performed in an appropriate setting for the procedure.~~

~~(6) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory test and procedures only when the screening and treatment is:~~

~~(a) For chlamydia and gonorrhea as part of the comprehensive family planning preventive medicine visit for women thirteen to twenty five years of age; or~~

~~(b) Performed in conjunction with an office visit that has a primary focus and diagnosis of family planning; and~~

~~(c) Medically necessary for the client to safely, effectively, and successfully use, or to continue to use, her chosen contraceptive method.~~

~~(7) Education and supplies for FDA approved contraceptives, natural family planning and abstinence.) (1) The medicaid agency covers one of the following services per client per year, as medically necessary:~~

~~(a) A cervical, vaginal, and breast cancer screening exam; or~~

~~(b) A comprehensive prevention visit for family planning. (Under a delayed pelvic protocol, the comprehensive prevention visit for family planning may be split into two visits, per client, per year.)~~

~~(2) The cervical, vaginal, and breast cancer screening exam:~~

~~(a) Must be:~~

~~(i) Provided following the guidelines of a nationally recognized protocol; and~~

~~(ii) Conducted at the time of an office visit with a primary focus and diagnosis of family planning.~~

~~(b) May be billed by a provider other than a TAKE CHARGE provider.~~

~~(3) The comprehensive prevention visit for family planning:~~

~~(a) Must be provided by one or more qualified TAKE CHARGE trained providers. (See WAC 182-532-730.)~~

~~(b) Must include:~~

~~(i) A clinical breast examination and pelvic examination; and~~

~~(ii) Client-centered counseling that incorporates risk factor reduction for unintended pregnancy and anticipatory guidance about the advantages and disadvantages of all contraceptive methods.~~

~~(c) May include:~~

~~(i) A pap smear according to current, nationally recognized clinical guidelines; and~~

~~(ii) For women ages thirteen through twenty-five, routine gonorrhea and chlamydia testing and treatment.~~

(d) Must be documented in the client's chart with detailed information that allows for a well-informed follow-up visit.

(e) Must be billed by a TAKE CHARGE provider only.

#### NEW SECTION

**WAC 182-532-533 Family planning only program—Other covered services.** Other family planning only services covered for women may include all the following:

(1) An office visit directly related to a family planning problem, when medically necessary.

(2) Food and Drug Administration (FDA)-approved prescription and nonprescription contraceptive methods, as identified in chapter 182-530 WAC.

(3) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies, as described in chapter 182-530 WAC.

(4) Sterilization procedures that meet the requirements of WAC 182-531-1550 if requested by the client and performed in an appropriate setting for the procedures.

(5) Screening and treatment for sexually transmitted infections (STI), including lab tests and procedures, only when the screening and treatment are:

(a) For chlamydia and gonorrhea as part of the comprehensive prevention visit for family planning for women ages thirteen through twenty-five; or

(b) Part of an office visit that has a primary focus and diagnosis of family planning, and is medically necessary for the client's safe and effective use of her chosen contraceptive method.

(6) Education and supplies for FDA-approved contraceptives, natural family planning, and abstinence.

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

**WAC 182-532-540 Family planning only program—Noncovered services.** (1) Medical services are not covered under the family planning only program unless those services are:

~~((1))~~ (a) Performed in relation to a primary focus and diagnosis of family planning; and

~~((2) Are))~~ (b) Medically necessary for ~~((the))~~ a client to safely~~((;))~~ and effectively~~((, and successfully))~~ use, or continue to use, her chosen contraceptive method.

(2) The medicaid agency does not cover inpatient services under the family planning only program except for complications arising from covered family planning services. For approval of exceptions, providers of inpatient services must submit a report to the medicaid agency, detailing the circumstances and conditions that required inpatient services. (See WAC 182-501-0160.)

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

**WAC 182-532-550 Family planning only program—Reimbursement and payment limitations.** (1) ~~((department))~~ medicaid agency limits reimbursement under

the family planning only program to ~~((visits and))~~ services that:

(a) Have a primary focus and diagnosis of family planning as determined by a qualified licensed medical practitioner; and

(b) Are medically necessary for the client to safely ~~((;))~~ and effectively ~~((, and successfully))~~ use, or continue to use, her chosen contraceptive method.

(2) The ~~((department))~~ medicaid agency reimburses providers for covered family planning only services using the ~~((department's))~~ agency's published fee schedules.

(3) ~~((The department does not cover inpatient services under the family planning only program. However, inpatient charges may be incurred as a result of complications arising directly from a covered family planning service. If this happens, providers of family planning related inpatient services that are not otherwise covered by third parties or other medical assistance programs must submit to the department a complete report of the circumstances and conditions that caused the need for the inpatient services.))~~ Family planning pharmacy services, family planning lab services, and sterilization services are reimbursed by the medicaid agency under the rules and fee schedules applicable to these specific programs.

(4) The medicaid agency pays a dispensing fee only for contraceptive drugs that are purchased through the 340B program of the Public Health Service Act. (See chapter 182-530 WAC.)

(5) Under WAC 182-501-0200, the medicaid agency requires a provider to seek timely reimbursement from a third party when a client has available third-party resources. The exceptions to this requirement are described under WAC 182-501-0200 (2) and (3).

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

**WAC 182-532-700 TAKE CHARGE program—Purpose.** TAKE CHARGE is a family planning demonstration and research program approved by the federal government under a medicaid ~~((program))~~ waiver. The purpose of ~~((the))~~ TAKE CHARGE ~~((program))~~ is to ~~((make family planning services available to men and women with incomes at or below two hundred percent of the federal poverty level. See WAC 388-532-710 for a definition of TAKE CHARGE))~~ reduce unintended pregnancies and lower the expenditures for medicaid-paid births.

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

**WAC 182-532-720 TAKE CHARGE program—Eligibility.** (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in chapter 388-424 WAC, and ~~((provide))~~ give proof of citizenship or qualified alien status ~~((;))~~ and identity upon request from the medicaid agency;

(b) Provide a valid Social Security number (SSN);

~~((c))~~ (c) Be a resident of the state of Washington as described in WAC 388-468-0005;

~~((d))~~ (d) Have an income at or below two hundred fifty percent of the federal poverty level as described in WAC ~~((388-478-0075))~~ 182-505-0100;

~~((e))~~ (e) Need family planning services;

~~((f))~~ (f) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

~~((g))~~ (g) Not be ~~((currently))~~ covered currently through another medical assistance program for family planning ~~((or have any health insurance that covers family planning, except as provided in WAC 388-530-790)).~~

(2) A client who is pregnant or sterilized is not eligible for TAKE CHARGE.

(3) A client is authorized for TAKE CHARGE coverage for one year from the date the ~~((department))~~ medicaid agency determines eligibility ~~((or for the duration of the demonstration and research program, whichever is shorter, as long as the criteria in subsection (1) and (2) of this section continue to be met)).~~ Upon reapplication for TAKE CHARGE by the client, the ~~((department))~~ medicaid agency may renew the coverage for an additional period ~~((s))~~ of up to one year ~~((each)),~~ or for the duration of the ~~((demonstration and research program))~~ waiver, whichever is shorter.

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

**WAC 182-532-730 TAKE CHARGE program—Provider requirements.** (1) A TAKE CHARGE provider must:

(a) Be a ~~((department approved))~~ family planning provider ~~((as described in WAC 388-532-050)),~~ which may include a registered nurse (RN), a licensed practical nurse (LPN), a trained and experienced health educator, a medical assistant, or a certified nursing assistant who assists a family planning provider;

(b) Meet the requirements in chapter 182-502 WAC;

(c) Provide only those services that are within the scope of their licenses;

(d) Sign and comply with the ~~((supplemental))~~ TAKE CHARGE agreement to participate in the TAKE CHARGE demonstration and research program according to the ~~((department's))~~ medicaid agency's TAKE CHARGE program guidelines;

~~((e))~~ (e) Comply with the required general medicaid agency and TAKE CHARGE provider policies, procedures, and administrative practices as detailed in the agency's billing instructions;

(f) Participate in the ~~((department's))~~ medicaid agency's specialized training for the TAKE CHARGE demonstration and research program ~~((prior to))~~ before providing TAKE CHARGE services ~~((;))~~;

~~((Providers must))~~ (g) Document that each individual responsible for providing TAKE CHARGE services is trained on all aspects of the TAKE CHARGE program;

~~((d))~~ (d) Comply with the required general department and TAKE CHARGE provider policies, procedures, and administrative practices as detailed in the department's billing instructions and provide referral information to clients regarding

available and affordable nonfamily planning primary care services;

~~((e))~~ (h) If requested by the ~~((department))~~ medicaid agency, participate in the research and evaluation component of the TAKE CHARGE demonstration and research program~~((:))~~;

~~((f))~~ (i) If requested by the client, forward the client's services card and ~~((TAKE CHARGE brochure))~~ any related information to the ~~((client))~~ client's preferred address within ~~((seven))~~ five working days of receipt ~~((unless otherwise requested in writing by the client))~~;

~~((g))~~ (j) Inform the client of his or her right to seek services from any TAKE CHARGE provider within the state; and

~~((h))~~ (k) Refer the client to available and affordable nonfamily planning primary care services, as needed.

(2) ~~((Department))~~ Medicaid agency providers who are not TAKE CHARGE providers, ((e.g.)) such as pharmacies, ((laboratories)) labs, and surgeons performing sterilization procedures ((who are not TAKE CHARGE providers)) may ~~((furnish family planning ancillary TAKE CHARGE services, as defined in this chapter, to eligible TAKE CHARGE clients. The department reimburses for these services under the rules and fee schedules applicable to the specific services provided under the department's other programs))~~ give family planning pharmacy services, family planning lab services and sterilization services to TAKE CHARGE clients.

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

**WAC 182-532-740 TAKE CHARGE program—Covered ~~((services))~~ yearly exams for women.** ~~((The department covers the following TAKE CHARGE services for women:~~

~~((1))~~ (1) One session of application assistance per client, per year;

~~((2))~~ (2) Food and Drug Administration (FDA) approved prescription and nonprescription contraceptives as provided in chapter 388-530 WAC, Prescription drugs (outpatient);

~~((3))~~ (3) Over the counter (OTC) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety (as described in chapter 388-530 WAC, Prescription drugs (outpatient));

~~((4))~~ (4) One comprehensive family planning preventive medicine visit billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year. The comprehensive family planning preventive medicine visit must be:

~~((a))~~ (a) Provided by one or more of the following TAKE CHARGE trained providers:

~~((i))~~ (i) Physician or physician's assistant (PA);

~~((ii))~~ (ii) An advanced registered nurse practitioner (ARNP);

or

~~((iii))~~ (iii) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the above listed clinicians.

~~((b))~~ (b) Documented in the client's chart with detailed information that allows for a well-informed follow-up visit.

~~((5))~~ (5) Sterilization procedure that meets the requirements of WAC 388-531-1550, if the service is:

~~((i))~~ (i) Requested by the TAKE CHARGE client; and

~~((ii))~~ (ii) Performed in an appropriate setting for the procedure.

~~((6))~~ (6) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures, only when the screening and treatment is:

~~((a))~~ (a) For chlamydia and gonorrhea as part of the comprehensive family planning preventive medicine visit for women thirteen to twenty-five years of age; or

~~((b))~~ (b) Performed in conjunction with an office visit that has a primary focus and diagnosis of family planning; and

~~((c))~~ (c) Medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

~~((7))~~ (7) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

~~((8))~~ (8) An office visit directly related to a family planning problem, when medically necessary. (1) The medicaid agency covers one of the following services per client per year, as medically necessary:

~~((a))~~ (a) A cervical, vaginal, and breast cancer screening exam; or

~~((b))~~ (b) A comprehensive prevention visit for family planning. (Under a delayed pelvic protocol, the comprehensive prevention visit for family planning may be split into two visits, per client, per year.)

~~((2))~~ (2) The cervical, vaginal and breast cancer screening exam must be:

~~((a))~~ (a) Provided following the guidelines of a nationally recognized protocol;

~~((b))~~ (b) Conducted at the time of an office visit with a primary focus and diagnosis of family planning; and

~~((c))~~ (c) Performed by a TAKE CHARGE provider.

~~((3))~~ (3) The comprehensive prevention visit for family planning:

~~((a))~~ (a) Must be provided by one or more TAKE CHARGE-trained providers. (See WAC 182-532-730.)

~~((b))~~ (b) Must include:

~~((i))~~ (i) A clinical breast examination and pelvic examination; and

~~((ii))~~ (ii) Client-centered counseling that incorporates risk factor reduction for unintended pregnancy and anticipatory guidance about the advantages and disadvantages of all contraceptive methods.

~~((c))~~ (c) May include:

~~((i))~~ (i) A pap smear according to current, nationally recognized clinical guidelines; and

~~((ii))~~ (ii) For women ages thirteen through twenty-five, routine gonorrhea and chlamydia testing and treatment.

~~((d))~~ (d) Must be documented in the client's chart with detailed information that allows for a well-informed follow-up visit.

~~((e))~~ (e) Must be billed by a TAKE CHARGE provider only.

NEW SECTION

**WAC 182-532-743 TAKE CHARGE program—Other covered services for women.** Other TAKE CHARGE services covered for women may include all the following:

- (1) An office visit directly related to a family planning problem, when medically necessary.
- (2) Food and Drug Administration (FDA)-approved prescription and nonprescription contraceptive methods, as provided in chapter 182-530 WAC.
- (3) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies, as described in chapter 182-530 WAC.
- (4) Sterilization procedures that meet the requirements of WAC 182-531-1550 if requested by the client and performed in an appropriate setting for the procedures.
- (5) Screening and treatment for sexually transmitted infections (STI), including lab tests and procedures, only when the screening and treatment are:
  - (a) For chlamydia and gonorrhea as part of the comprehensive prevention visit for family planning for women thirteen through twenty-five years of age; or
  - (b) Part of an office visit that has a primary focus of family planning and is medically necessary for the client's safe and effective use of her chosen contraceptive method.
- (6) Education and supplies for FDA-approved contraceptives, natural family planning, and abstinence.

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

**WAC 182-532-745 TAKE CHARGE program—Covered services for men.** The ~~((department))~~ medicaid agency covers all the following TAKE CHARGE services for men:

- (1) ~~((One session of application assistance per client, per year;~~
  - ~~(2))~~ Over-the-counter (OTC) ~~((contraceptives, drugs, and))~~ contraceptive supplies ~~((t)),~~ as described in chapter ~~((388-530))~~ 182-530 WAC ~~((, Prescription Drugs (Outpatient))~~);
  - ~~(3) Sterilization procedure that meets the requirements of WAC 388-531-1550, if the service is:~~
    - ~~(a) Requested by the TAKE CHARGE client; and~~
    - ~~(b) Performed in an appropriate setting for the procedure.~~
  - ~~(4))~~ ;
  - ~~(2) Sterilization procedures that meet the requirements of WAC 182-531-1550 if requested by the client and performed in an appropriate setting for the procedures.~~
  - ~~(3) Screening and treatment for sexually transmitted ~~((diseases-))~~infections ~~((STD-I))~~ STI, including ~~((laboratory))~~ lab tests and procedures, only when the screening and treatment ~~((is))~~ are related to ~~((;))~~ and medically necessary for ~~((;))~~ a sterilization procedure.~~
  - ~~((5))~~ (4) Education and supplies for FDA-approved contraceptives, natural family planning, and abstinence.
  - ~~((6))~~ (5) One education and counseling session for risk reduction (ECRR) per client ~~((;))~~ every twelve months for those male clients whose female partners are at moderate to high risk for unintended pregnancy. ECRR must be:

- (a) Provided by one or more ~~((of the following))~~ TAKE CHARGE-trained providers~~((;~~
  - ~~(i) Physician or physician's assistant (PA);~~
  - ~~(ii) An advanced registered nurse practitioner (ARNP);~~
  - ~~or~~
  - ~~(iii) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the clinicians listed in subsection (i) and (ii) of this section))~~ (see WAC 182-532-730); and
- (b) Documented in the client's chart with detailed information that allows for a well-informed follow-up visit.

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

**WAC 182-532-750 TAKE CHARGE program—Non-covered services.** ~~((The department does not cover the following medical services under the TAKE CHARGE program:~~

- ~~(1) Abortions and other pregnancy-related services; and~~
- ~~(2) Any other medical services, unless those services are:))~~ (1) Medical services are not covered under the TAKE CHARGE program unless those services are:
  - (a) Performed in relation to a primary focus and diagnosis of family planning; and
  - (b) Medically necessary for ~~((the))~~ clients to safely ~~((;))~~ and effectively ~~((, and successfully))~~ use, or continue to use, ~~((his or her))~~ their chosen contraceptive methods.

(2) The medicaid agency does not cover inpatient services under the TAKE CHARGE program except for complications arising from covered family planning services. For approval of exceptions, providers of inpatient services must submit a report to the medicaid agency, detailing the circumstances and conditions that required inpatient services. (See WAC 182-501-0160.)

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

**WAC 182-532-760 TAKE CHARGE program—Documentation requirements.** In addition to the documentation requirements in WAC ~~((388-502-0020))~~ 182-502-0020, TAKE CHARGE providers must keep the following records:

- ~~(1) ((TAKE CHARGE application form(s));~~
- ~~(2))~~ The signed supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE program;
- ~~((3))~~ (2) Documentation of the ~~((department's))~~ medicaid agency's specialized TAKE CHARGE training and/or in-house ~~((in-service))~~ TAKE CHARGE training for each individual responsible for providing TAKE CHARGE ~~((;))~~;
- ~~((4))~~ (3) TAKE CHARGE application form(s), along with supporting documentation if provided;
- ~~(4) Chart notes ~~((that reflect))~~ reflecting that the primary focus and diagnosis of the visit was family planning;~~
- ~~(5) Contraceptive methods discussed with the client;~~
- ~~(6) Notes on any discussions of emergency contraception and needed prescription(s);~~
- ~~(7) The client's plan for the contraceptive method to be used, or the reason for no contraceptive method and plan;~~

(8) Documentation of the education, counseling and risk reduction (ECRR) service, if provided, with sufficient detail that allows for follow((-)) up;

(9) Documentation of referrals to or from other providers;

(10) A form signed by the client authorizing the release of information for referral purposes, as necessary;

(11) The client's written and signed consent requesting that his or her services card be sent to the TAKE CHARGE provider's office to protect confidentiality; and

(12) ~~(A copy of the client's picture identification;~~

~~(13) A copy of the documentation used to establish United States citizenship or legal permanent residency; and~~

~~(14)) If applicable, a copy of the completed ((department)) medicaid agency-approved sterilization consent form ((DSHS 13-364—available for download at <http://www.dshs.wa.gov/msa/forms/eforms.html>) (see WAC 388-531-1550)). (See WAC 182-531-1550 for more details about sterilization and the consent form.)~~

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

**WAC 182-532-780 TAKE CHARGE program—Reimbursement and payment limitations.** (1) The ~~((department))~~ medicaid agency limits reimbursement under the TAKE CHARGE program to those services that:

(a) Have a primary focus and diagnosis of family planning as determined by a qualified licensed medical practitioner; and

(b) Are medically necessary for ~~((the))~~ clients to safely~~(;)~~ and effectively~~(, and successfully)~~ use, or continue to use, ~~((his or her))~~ their chosen contraceptive methods.

(2) The ~~((department))~~ medicaid agency reimburses TAKE CHARGE providers for covered TAKE CHARGE services ~~((according to))~~ using the ((department's)) agency's published ((TAKE CHARGE)) fee schedule.

(3) Providers without signed TAKE CHARGE agreements are reimbursed by the medicaid agency only for clinic visits that are related to sterilization or complications from a birth control method.

(4) Family planning pharmacy services, family planning lab services, and sterilization services are reimbursed by the medicaid agency under the rules and fee schedules applicable to these specific programs.

(5) The medicaid agency pays a dispensing fee only for contraceptive drugs that are purchased through the 340B program of the Public Health Service Act. (See chapter 182-530 WAC.)

(6) The ~~((department))~~ medicaid agency limits reimbursement for TAKE CHARGE research and evaluation activities to selected research sites.

~~((4))~~ (7) Federally qualified health centers (FQHCs), rural health centers (RHCs), and Indian health providers who ~~((choose to become))~~ are TAKE CHARGE providers must bill the ~~((department))~~ medicaid agency for TAKE CHARGE services without regard to:

(a) Their special rates and fee schedules~~((The department does not reimburse FQHCs, RHCs or Indian health pro-~~

~~viders under the encounter rate structure for TAKE CHARGE services;~~

~~(5)); or~~

~~(b) The encounter rate structure.~~

~~(8) The ((department)) medicaid agency requires TAKE CHARGE providers to meet the billing requirements of WAC ((388-502-0150 (billing time limits)). In addition, all final billings and billing adjustments related to the TAKE CHARGE program must be completed no later than two years after the demonstration and research program terminates. The department will not accept new billings or billing adjustments that increase expenditures for the TAKE CHARGE program after the cut-off date.~~

~~(6) The department does not cover inpatient services under the TAKE CHARGE program. However, inpatient charges may be incurred as a result of complications arising directly from a covered TAKE CHARGE service. If this happens, providers of TAKE CHARGE related inpatient services that are not otherwise covered by third parties or other medical assistance programs must submit to the department a complete report of the circumstances and conditions that caused the need for inpatient services for the department to consider payment under WAC 388-501-0165)) 182-502-0150.~~

~~((7) The department)) (9) Under WAC 182-501-0200, the medicaid agency requires a provider ((under WAC 388-501-0200)) to seek timely reimbursement from a third party when a client has available third-party resources. The exceptions to this requirement are described under WAC ((388-501-0200)) 182-501-0200 (2) and (3) and ~~((388-532-790))~~ 182-532-790.~~

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

**WAC 182-532-790 TAKE CHARGE program—Good cause exemption from billing third party insurance.** ~~((4))~~ TAKE CHARGE applicants who are eighteen years of age or younger and depend on their parents' medical insurance, or individuals who are domestic violence victims who depend on their spouses or another's health insurance may request an exemption, due to "good cause," from the eligibility restrictions in WAC 388-532-720 (1)(f) and from the use of available third party family planning coverage. Under the TAKE CHARGE program, "good cause" means that use of the third party coverage would violate his or her confidentiality because the third party:

(a) ~~Routinely or randomly sends verification of services to the third party subscriber and that subscriber is other than the applicant; and/or~~

(b) ~~Requires the applicant to use a primary care provider who is likely to report the applicant's request for family planning services to the subscriber.~~

~~(2) If subsection (1)(a) or (1)(b) of this section applies, the applicant is eligible for TAKE CHARGE without regard to the available third party family planning coverage.)~~ (1) Under the TAKE CHARGE program, two groups of clients may request an exemption from the medicaid requirement to bill third-party insurance due to "good cause." The two groups are:

(a) TAKE CHARGE applicants who:

(i) Are eighteen years of age or younger;

(ii) Are covered under their parents' health insurance;

and

(iii) Do not want their parents to know that they are seeking and/or receiving family planning services.

(b) Individuals who are domestic violence victims and are covered under the perpetrator's health insurance.

(2) "Good cause" means that the use of the third-party coverage would violate a client's confidentiality because the third party:

(a) Routinely sends verification of services to the third-party subscriber and that subscriber is someone other than the applicant; and/or

(b) Requires the applicant to use a primary care provider who is likely to report the applicant's request for family planning services to the subscriber.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 182-532-505      Family planning only program—Definitions.

WAC 182-532-710      TAKE CHARGE program—Definitions.

**WSR 13-11-077  
PROPOSED RULES  
DEPARTMENT OF LICENSING**

[Filed May 16, 2013, 3:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-08-046.

Title of Rule and Other Identifying Information: Chapters 308-124 and 308-124A through 308-124H WAC, real estate licensing, real estate consumer protections and real estate continuing education.

Hearing Location(s): 2000 4th Avenue West, 2nd Floor Conference Room, Olympia, WA, on June 25, 2013, at 1:30 p.m.

Date of Intended Adoption: June 26, 2013.

Submit Written Comments to: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98507, e-mailjmcDonald@dol.wa.gov, fax (360) 570-7051, by June 14, 2013.

Assistance for Persons with Disabilities: Contact Sally Adams by June 14, 2013, TTY (360) 664-0116 or (360) 664-6524.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments will clarify existing rules to assist education providers and licensees regarding education classes and scores, processes for transferring licenses, and use of company names. Clarify existing consumer protection rules regarding trust funds, maintenance of consumer transaction records, and notifications when closing a real estate firm. The language will also

be updated to reflect language used in current practice. All proposed rule amendments are requested by real estate commission, industry or in response to legislation and meet exemption criteria outlined in Executive Order 10-06.

Reasons Supporting Proposal: Consumer protection and updating to current terminology.

Statutory Authority for Adoption: RCW 18.85.041.

Statute Being Implemented: RCW 18.85.041, 18.85-181, 18.85.221, 18.85.275, 18.85.285, 18.85.361.

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

Name of Proponent: Real estate commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6525.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules are for professional licensees and are not relevant to business. The department of licensing and the real estate commission utilized stakeholders, including professional licensees, to participate in the making of this rule proposal.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is exempt from the provisions of this chapter.

May 16, 2013  
Damon Monroe  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124-300 Definitions.** Words and terms used in this chapter shall have the same meaning as each has under chapter 18.85 RCW unless otherwise clearly provided in this chapter, or the context in which they are used in this chapter clearly indicates that they be given some other meaning.

(1) "Branch manager" is the natural person who holds a managing broker's license and has delegated authority by the designated broker to manage a single physical location of a branch office. The department shall issue an endorsement for "branch managers."

(2) "Affiliated licensees" are the natural persons licensed as brokers or managing brokers employed by a firm and who are licensed to represent the firm in the performance of any of the acts specified in chapter 18.85 RCW.

~~(3) ("Prospect procurement" is initiating contact with a prospective buyer, seller, landlord or tenant for the purpose of engaging in a sale, lease or rental of real estate or a business opportunity, and the contact is initiated under a promise of compensation.~~

(4)) "Brokerage service contracts" include, but are not limited to, purchase and sale agreements, lease or rental agreements, listings, options, agency agreements, or property management agreements.

~~((5))~~ (4) "Branch office" means:

(a) A separate physical office of the real estate firm; and

(b) Has a different mailing address of the main firm office; and

(c) Uses the real estate firm's UBI (unified business identifier) number.

#### NEW SECTION

**WAC 308-124A-726 Reversion from managing broker to broker license.** A managing broker may apply to revert from a managing broker license to a broker license by completing the department form and paying all fees, if applicable. If the managing broker is in active status, the managing broker needs to secure the designation broker's signature acknowledging the reversion of managing broker license to a broker's license. The new broker license renewal date remains the same. To revert to a managing broker license the broker must meet all of the requirements listed in RCW 18.85.111 including taking the examination.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124A-760 Grading of examinations.** (1) To pass the broker examination a minimum scaled score of 70 is required on each portion. The broker examination shall consist of two portions:

(a) The national portion consisting of questions that test general real estate practices; and

(b) The state portion consisting of questions that test on Washington laws and regulations related to real estate licensing.

(2) To pass the managing broker examination a minimum scaled score of 75 is required on each portion. The managing broker examination shall consist of two portions:

(a) The national portion consisting of simulation examination questions that test general real estate brokerage practices which include information gathering and decision-making aspects. A candidate must achieve a minimum scaled score of 75 on each aspect to pass the entire portion; and

(b) The state portion consisting of questions that test on Washington laws and regulations related to real estate licensing, and the closing/settlement process.

(3) A passing score for a portion of an examination is valid for a period of six months.

#### NEW SECTION

**WAC 308-124A-788 License activation.** (1) An inactive license may be placed on active status pursuant to RCW 18.85.265.

(2) A broker may use a thirty clock hour course from a curriculum approved by the director, in advanced real estate practices or real estate law for both activation of a license that has been inactive for three or more years and for first renewal of an active license as required in WAC 308-124A-785.

AMENDATORY SECTION (Amending WSR 11-09-009, filed 4/8/11, effective 5/9/11)

**WAC 308-124A-790 Continuing education clock hour requirements.** A licensee shall submit to the department evidence of satisfactory completion of clock hours, pur-

suant to RCW 18.85.211, in the manner and on forms prescribed by the department.

(1) A licensee applying for renewal of an active license shall submit evidence of completion of at least thirty clock hours of instruction in a course(s) approved by the real estate program and commenced within ~~((thirty-six))~~ forty-eight months of a licensee's renewal date. A minimum of fifteen clock hours must be completed within twenty-four months of the licensee's current renewal date, and a portion of that fifteen must include three hours of the prescribed core curriculum defined in WAC 308-124A-800. Up to fifteen clock hours of instruction beyond the thirty clock hours submitted for a previous renewal date may be carried forward to the following renewal date. Failure to report successful completion of the prescribed core curriculum clock hours shall result in denial of license renewal.

(2) The thirty clock hours shall be satisfied by evidence of completion of approved real estate courses as defined in WAC 308-124H-820. A portion of the thirty clock hours of continuing education must include three clock hours of prescribed core curriculum defined in WAC 308-124A-800 and three clock hours of prescribed transition course pursuant to RCW 18.85.481(2).

(3) Courses for continuing education clock hour credit shall be commenced after issuance of a first license.

(4) A licensee shall not place a license on inactive status to avoid the continuing education requirement or the post-licensing requirements. A licensee shall submit evidence of completion of continuing education clock hours to activate a license if activation occurs within one year after the license had been placed on inactive status and the last renewal of the license had been as an inactive license. A licensee shall submit evidence of completing the post-licensing requirements if not previously satisfied upon returning to active status.

(5) Approved courses may be repeated for continuing education credit in subsequent renewal periods.

(6) Clock hour credit for continuing education shall not be accepted if:

(a) The course is not approved pursuant to chapter 308-124H WAC and chapter 18.85 RCW;

(b) Course(s) was taken to activate an inactive license pursuant to RCW 18.85.265(3);

(c) Course(s) submitted to satisfy the requirements of RCW 18.85.101 (1)(c), broker's license, RCW 18.85.211, 18.85.111, managing broker's license and WAC 308-124A-780, reinstatement.

(7) Instructors shall not receive clock hour credit for teaching or course development.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124A-815 ((Firm names—Name)) Prohibited firm and assumed names.** (1) Department can deny, suspend, reject firm names or assumed names that are in the department's opinion: Derogatory, similar or the same as other licensed firm names, implies that it is a public agency or government, implies nonprofit or research organization.

(2) A real estate firm shall not be issued a license nor advertise in any manner using a name(~~s or trade styles~~)

which ((are)) is in the department's opinion similar to currently issued firm or assumed name licenses or imply that either the real estate firm is a nonprofit organization, research organization, public bureau or public group. A bona fide franchisee may be licensed using the name of the franchisor with the firm name of the franchisee.

#### NEW SECTION

##### **WAC 308-124B-207 Real estate firm identification.**

Any firm or branch office of the real estate firm shall be identified by displaying the name, visible to the public, of the firm or the assumed name as licensed at the address appearing on the license.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124C-105 Required records.** The designated broker is required to keep the following on behalf of the firm:

- (1) Trust account records:
  - (a) Duplicate receipt book or cash receipts journal recording all receipts;
  - (b) Sequentially numbered, nonduplicative checks with check register, cash disbursements journal or check stubs;
  - (c) Validated duplicate bank deposit slips or daily verified bank deposit;
  - (d) Client's accounting ledger summarizing all moneys received and all moneys disbursed for each real estate or business opportunity transaction or each property management account, contract or mortgage collection account;
  - (e) In conjunction with (d) of this subsection, separate ledger sheets for each tenant (including security deposit), lessee, vendee or mortgagor; for automated systems, the ledger sheets may be a computer generated printout which contains required entries;
  - (f) Reconciled bank statements and canceled checks for all trust bank accounts.
- (2) Other records:
  - (a) An accurate, up-to-date log of all agreements or contracts for brokerages services submitted by the firm's affiliated licensees.
  - (b) A legible copy of the transaction or contracts for brokerage services shall be retained in each participating real estate firm's files.
  - (c) A transaction folder containing all agreements, receipts, contracts, documents, leases, closing statements and material correspondence for each real estate or business opportunity transaction, and for each rental, lease, contract or mortgage collection account.
  - (d) All required records shall be maintained at one location where the firm is licensed. This location may be the main or any branch office.

AMENDATORY SECTION (Amending WSR 12-02-065, filed 1/3/12, effective 2/3/12)

**WAC 308-124C-125 Designated broker responsibilities.** Designated broker responsibilities include, but are not limited to:

- (1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.
- (2) Cooperating with the department in an investigation, audit or licensing matter.
- (3) Ensuring accessibility of the firm's offices and records to the director's authorized representatives, and ensure that copies of required records are made available upon demand.
- (4) Ensuring monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.
- (5) Ensuring monthly trial balances are completed, accurate and up-to-date.
- (6) Ensuring that the trial balance and the reconciliation show the account(s) are in balance.
- (7) Ensuring policies or procedures are in place to account for safe handling of customer or client funds or property.
- (8) Maintaining up-to-date written assignments of delegations of managing brokers and branch manager duties. The delegation agreement(s) must be signed by all parties to the agreement. Delegations must:
  - (a) Only be made to managing brokers licensed to the firm.
  - (b) Address duties of record maintenance, advertising, trust accounting, safe handling of customer/client funds and property, authority to bind, review of contracts, modify or terminate brokerage service contracts on behalf of the firm, supervision of brokers and managing brokers, and heighten supervision of brokers that are licensed for less than two years.
  - (c) Address hiring, transferring and releasing licensees to or from the firm.
- (9) Maintaining, implementing and following a written policy that addresses:
  - (a) Procedures for referring a home inspector to buyers or sellers. The policy will address the consumer's right to freely pick a home inspector of the buyer's or seller's choice and prevent any collusion between the home inspector and a real estate licensee. If a licensee refers a home inspector to a buyer or seller with whom they have or have had a relationship including, but not limited to, a business or familial relationship, then full disclosure of the relationship must be provided in writing prior to the buyer or seller using the services of the home inspector.
  - (b) Levels of supervision of all brokers, managing brokers and branch managers of the firm.
  - (c) Review of all brokerage service contracts involving any broker of the firm licensed for less than two years. Review must be completed by the designated broker or their delegated managing broker within five business days of mutual acceptance. Documented proof of review shall be maintained at the firm's record locations.
- (10) Ensuring that all persons performing real estate brokerage services on behalf of the firm and the firm itself are appropriately licensed.
- (11) Ensuring affiliated licensees submit their transaction documents to the designated broker, branch manager or delegated managing broker within two business days of mutual acceptance.



(12) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

(13) Within five business days provide the department with a closing firm affidavit when closing the firm.

(14) Within five business days ensure that all brokerage services contracts are either terminated or transferred to another licensed real estate firm with the parties' written authorization.

(15) Within five business days notify all parties to pending brokerage service transaction(s) that the real estate firm is closing and that the firm will either:

(a) Transfer the pending transaction documents, with the parties' written authorization(s) to another real estate firm; or

(b) Ensure the transaction(s) are completed without any new licensable activity.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124D-200 Checks—Payee requirements.**

All checks received as earnest money, security or damage deposits, rent, lease payments, contract or mortgage payments on real property or business opportunities owned by clients shall be made payable to the real estate firm as licensed, unless it is mutually agreed in writing by the principals that the deposit shall be paid to ~~((the lessor;))~~ the seller or an escrow agent named in the agreement. The ~~((designated broker))~~ real estate firm shall retain a copy of the written agreement.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124D-220 Office requirement for brokers actively licensed in another jurisdiction.** The term "office" in RCW ~~((18.85-180))~~ 18.85.231 for a ~~((broker))~~ firm actively licensed in another jurisdiction in which the broker's headquarter office is located shall mean the Washington location where trust account and transaction records are maintained. Such records are required to be maintained for three years. The trust account and transaction records shall be open and accessible to representatives of the department of licensing. The parties to the transaction shall have access to the transaction records prepared or retained for the requesting party.

~~A ((broker actively licensed in another jurisdiction seeking licensure in Washington, whose headquarter office is located in that other jurisdiction;))~~ firm whose headquarter office is actively licensed in another jurisdiction and is seeking licensure in Washington must obtain a firm license. The firm must also register a natural person who qualifies as a managing broker in Washington and has a controlling interest in the firm to be the firm's Washington designated broker. The firm shall notify the ((department)) real estate program of the location address where the records are maintained in the state of Washington and shall include this address with the headquarter's address on the license application.

The Washington license shall be posted at the licensed Washington location where the records are being maintained.

Within thirty days after mailing of the notice of audit, the broker shall come to the department's office, after making an

appointment~~((;))~~ in ~~((the geographic location (Seattle or) Olympia(( nearest to the location of the records))~~ to sign the audit report.

~~((If a real estate licensee actively licensed in another jurisdiction, whose headquarter office is located in that other jurisdiction, has obtained a Washington real estate license through a license recognition agreement, that licensee may maintain required Washington real estate transaction records in their out of state jurisdiction and with the out of state broker to whom they are licensed, providing it is allowed for in the license recognition agreement.))~~

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124D-225 Multiple business usage of office.** A ~~((broker))~~ firm may conduct ~~((a))~~ real estate brokerage ~~((business))~~ services at an office location where the firm or designated broker concurrently conducts a separate, business activity. The real estate brokerage ~~((business))~~ service activities shall be carried out and business records shall be maintained separate and apart from any other business activities by the firm or designated broker.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124E-105 Administration of funds held in trust—General procedures.** Any real estate broker who receives funds or moneys from any principal or any party to a real estate or business opportunity transaction, property management agreement, contract/mortgage collection agreement, or advance fees, shall hold the funds or moneys in trust for the purposes of the brokerage service contract or transaction, and shall not utilize such funds or moneys for the benefit of the broker, managing broker, real estate firm or any person not entitled to such benefit. Designated brokers are responsible for ensuring their affiliated licensees safeguard client funds by following these rules. Funds or moneys received in trust shall be deposited in a bank, savings association, or credit union insured by the Federal Deposit Insurance Corporation or the share insurance fund of the National Credit Union Administration, or any successor federal deposit insurer. The financial institution must be doing business in and able to accept service in Washington state. The designated broker is responsible for the administration of trust funds and accounts to include, but not be limited to:

- Depositing;
  - Holding;
  - Disbursing;
  - Receipting;
  - Posting;
  - Recording;
  - Accounting to principals;
  - Notifying principals and cooperating licensees of material facts; and
  - Reconciling and properly setting up a trust account.
- The designated broker is responsible for handling trust funds as provided herein.

(1) Bank accounts shall be designated as trust accounts in the firm name or assumed name as licensed.

(2) Interest credited to a client's account must be recorded as a liability on client ledger. Interest assigned or credited by written assignment agreement to the firm may not be maintained in the trust account. The designated broker is responsible for making arrangements with the financial institution to credit this interest to the general account of the firm.

(3) The designated broker shall establish and maintain a system of records and procedures approved by the real estate program that provides for an audit trail accounting of all funds received and disbursed. All funds must be identified to the account of each individual client.

(4) Alternative systems of records or procedures proposed by a designated broker shall be approved in advance in writing by the real estate program.

(5) The designated broker shall be responsible for deposits, disbursements, or transfers of clients' funds received and held in trust.

(6) All funds or moneys received for any reason pertaining to the sale, renting, leasing, optioning of real estate or business opportunities, contract or mortgage collections or advance fees shall be deposited in the firm's real estate trust bank account not later than the (~~first~~) next banking day following receipt thereof; except:

(a) Cash must be deposited in the firm's trust account not later than the next banking day;

(b) Checks received as earnest money deposits when the earnest money agreement states that a check is to be held for a specified length of time or until the occurrence of a specific event; and

(c) For purposes of this section, Saturday, Sunday, or other legal holidays as defined in RCW 1.16.050 shall not be considered a banking day.

(7) All checks, funds or moneys received shall be identified by the date received and by the amount, source and purpose on either a cash receipts journal or duplicate receipt retained as a permanent record.

(8) All deposits to the trust bank account shall be identified by the source of funds and transaction to which it applies.

(9) An individual client's ledger sheet shall be established and maintained for each client for whom funds are received in trust, which shows all receipts and disbursements. The firm will maintain the minimum amount required by the financial institution in the trust account to prevent the trust account from being closed. A ledger sheet identified as "opening account" will be required for funds that are used to open the account or to keep the trust account from being closed. The credit entries must show the date of deposit, amount of deposit, and item covered including, but not limited to "earnest money deposit," "down payment," "rent," "damage deposit," "rent deposit," "interest," or "advance fee." The debit entries must show the date of the check, check number, amount of the check, name of payee and item covered. The "item covered" entry may indicate a code number per chart of accounts, or may be documented by entry in a cash receipts journal, cash disbursements journal, or check voucher.

(10) The reconciled real estate trust bank account balance must be equal at all times to the outstanding trust liability to clients and the funds in the "open account" ledger. The balance shown in the check register or bank control account

must equal the total liability to clients and the "open account" ledger.

(11) The designated broker shall be responsible for preparation of a monthly trial balance of the client's ledger, reconciling the ledger with both the trust account bank statement and the trust account check register or bank control account. The checkbook balance, the bank reconciliation and the client ledgers (including the "open account" ledger) must be in agreement at all times. A trial balance is a listing of all client ledgers, including the "open account" ledger, showing the owner name or control number, date of last entry to the ledger and the ledger balance.

(12) All disbursements of trust funds shall be made by check, or electronic transfer, drawn on the real estate trust bank account and identified thereon to a specific real estate or business opportunity transaction, or collection/management agreement. The number of each check, amount, date, payee, items covered and the specific client's ledger sheet debited must be shown on the check stub or check register and all data must agree exactly with the check as written. No check numbers on any single trust account can be duplicated.

(a) No disbursement from the trust account shall be made based upon wire transfer receipts until the deposit has been verified.

(b) The designated broker must provide a follow-up "hard-copy" debit memo when funds are disbursed via wire transfer.

(c) The designated broker shall retain in the transaction file a copy of instructions signed by the owner of funds to be wire-transferred which identifies the receiving entity and account number.

(13) Voided checks written on the trust bank account shall be permanently defaced and shall be retained.

(14) Commissions owed to another firm may be paid from the real estate trust bank account. Those commissions shall be paid promptly upon receipt of funds. Commissions shared with another firm are a reduction of the gross commissions received.

(15) No deposits to the real estate trust bank account shall be made of funds:

(a) That belong to the designated broker or the real estate firm, except that a designated broker may deposit a minimal amount to open the trust bank account or maintain a minimal amount to keep the account from being closed; or

(b) That do not pertain to a client's real estate or business opportunity sales transaction or are not received in connection with a client's rental, contract or mortgage collection account.

(16) No disbursements from the real estate trust bank account shall be made:

(a) For items not pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account;

(b) Pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account in excess of the actual amount held in the real estate trust bank account in connection with that transaction or collection account;

(c) In payment of a commission owed to any person licensed to the firm or in payment of any business expense of

the firm. Payment of commissions to persons licensed to the firm or of any business expense of the designated broker or firm shall be paid from the regular business bank account of the firm.

(d) For bank charges of any nature, including bank services, checks or other items, except as specified in WAC 308-124E-110 (1)(a) and (d). Bank charges are business overhead expenses of the real estate firm. Arrangements must be made with the bank to have any such charges applicable to the real estate trust bank account charged to the regular business bank account, or to provide a separate monthly statement of bank charges so that they may be paid from the firm's business bank account.

(17) The provisions of this chapter are applicable to manual or computerized accounting systems. For clarity, the following is addressed for computer systems:

(a) The system must provide for a capability to back up all data files.

(b) Receipt, check or disbursement registers or journals, bank reconciliations, and monthly trial balances will be maintained ~~((in printed or electronic formats))~~ and available for immediate retrieval or printing upon demand of the department.

(c) The designated broker will maintain a ~~((printed,))~~ dated source document file or index file to support any changes to existing accounting records.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124E-110 Administration of funds held in trust—Real estate and business opportunity transactions.** The procedures in this section are applicable to funds received by the firm in connection with real estate sales, business opportunity transactions or options. These procedures are in addition to the requirements of the general trust account procedures contained in WAC 308-124E-105.

(1) Bank accounts, deposit slips, checks and signature cards shall be designated as trust accounts in the firm or assumed name as licensed. Trust bank accounts for real estate sales or business opportunity transactions shall be interest bearing demand deposit accounts. These accounts shall be established as described in RCW 18.85.285 and this section.

(a) The firm shall maintain a pooled interest-bearing trust account identified as housing trust fund account for deposit of trust funds which are ten thousand dollars or less.

Interest income from this account will be paid to the department by the depository institution in accordance with RCW 18.85.285(8) after deduction of reasonable bank service charges and fees, which shall not include check printing fees or fees for bookkeeping systems.

(b) The licensee shall disclose in writing to the party depositing more than ten thousand dollars that the party has an option between (b)(i) and (ii) of this subsection:

(i) All trust funds not required to be deposited in the account specified in (a) of this subsection shall be deposited in a separate interest-bearing trust account for the particular party or party's matter on which the interest will be paid to the party(ies); or

(ii) In the pooled interest-bearing account specified in (a) of this subsection if the parties to the transaction agree in writing.

(c)(i) For accounts established as specified in (a) of this subsection, the designated broker will maintain an additional ledger ~~((card))~~ with the heading identified as "Housing trust account interest." As the monthly bank statements are received, indicating interest credited, the designated broker will post the amount to the pooled interest ledger ~~((card))~~. When the bank statement indicates that the interest was paid to the state or bank fees were charged, the designated broker will debit the ledger ~~((card))~~ accordingly.

(ii) For accounts established as specified in (b)(i) of this subsection, the interest earned or bank fees charged will be posted to the individual ledger ~~((card))~~.

(d) When the bank charges/fees exceed the interest earned, causing the balance to be less than trust account liability, the designated broker shall within one banking day after receipt of such notice, deposit funds from the firm's business account or other nontrust account to bring the trust account into balance with outstanding liability. The designated broker may be reimbursed by the party depositing the funds for these charges for accounts established as specified in (b)(i) of this subsection if the reimbursement is authorized in writing by the party depositing the funds. For accounts established under (a) of this subsection, the designated broker will absorb the excess bank charges/fees as a business expense.

(2) A separate check shall be drawn on the real estate trust bank account, payable to the firm as licensed, for each commission earned, after the final closing of the real estate or business opportunity transaction. Each commission check shall be identified to the transaction to which it applies.

(3) No disbursements from the real estate trust bank account shall be made in advance of closing of a real estate or business opportunity transaction or before the happening of a condition set forth in the purchase and sale agreement, to any person or for any reason, without a written release from both the purchaser and seller; except that:

(a) If the agreement terminates according to its own terms prior to closing, disbursement of funds shall be made as provided by the agreement without a written release; and

(b) Funds may be disbursed to the escrow agent designated in writing by the purchaser and seller to close the transaction, reasonably prior to the date of closing in order to permit checks to clear.

(4) When a transaction provides for the earnest money deposit/note or other instrument to be held by a party other than the firm, a ~~((broker))~~ licensee shall deliver the earnest money deposit to the party designated by the terms of the purchase and sale agreement to hold the funds. The licensee shall obtain a dated receipt from the party holding the earnest money funds. The licensee shall deliver the receipt to the designated broker or responsible managing broker. The dated receipt shall be placed in and retained in all participating firm's transaction files. The designated broker ~~((will have))~~ has the ultimate responsibility ~~((to deliver))~~ for delivery of the funds. ~~((A dated receipt from the party receiving the funds will be obtained and placed in the transaction file.))~~

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124H-845 Distance education delivery methods certified by the Association of Real Estate License Law Officials (ARELLO).** An applicant who provides evidence of certification of the distance education delivery method for his or her course by the Association of Real Estate License Law Officials (ARELLO) need not submit an application for approval of the same distance education delivery method when delivering the same course within the state of Washington provided a clock hour enforcement mechanism is in place.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124H-895 Administrator responsibilities.** Each school administrator shall be responsible for performing the following:

- (1) Ensure that the school, course(s), and instructor(s) are all currently approved before offering clock hour courses;
- (2) Ensure that all instructors are approved to teach in the appropriate topic area(s);
- (3) Sign and verify all course completion certificates;
- (4) Maintain all required records for five years, including attendance records, required publications, and course evaluations;
- (5) Safeguard comprehensive examinations;
- (6) Ensure the supervision and demonstrate responsibility for the conduct of employees and individuals affiliated with the school;
- (7) Periodically review courses and advise department of content currency as required;
- (8) Ensure each student is provided a course curriculum; and
- (9) Ensure each student is provided a course evaluation form.
- (10) Ensure that all broker candidates' completion dates are entered into the testing center's data base promptly.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124H-970 Guest lecturer(s)—Defined.** A topic area expert(s) may be utilized as a guest lecturer to assist an approved instructor to teach an approved course. The approved instructor is responsible for supervision of the approved course. Guest lecturer(s) shall not be utilized to circumvent the instructor approval requirements of this chapter. Guest lectures shall be limited to no more than fifteen minutes per clock hour. Guest lecturers can only be used when the approved instructor is present.

**WSR 13-11-097**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed May 20, 2013, 11:13 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-249-010 Definitions, abbreviations, and acronyms, 246-249-020, Site use permit, and 246-254-165 Low-level radioactive waste site use permit fees for generator or broker. Transfer of the low-level radioactive waste site use program rules and fees from the department of ecology (ecology) to the department of health (department) and make editorial changes.

Hearing Location(s): Department of Health, Point Plaza East, Room 153, 310 Israel Road S.E., Tumwater, WA 98501, on June 27, 2013, at 9:30 a.m.

Date of Intended Adoption: July 1, 2013.

Submit Written Comments to: Michelle K. Austin, Rules Coordinator, P.O. Box 47827, Olympia, WA 98504-7827, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2266, by June 27, 2013.

Assistance for Persons with Disabilities: Contact Michelle K. Austin by June 20, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature passed HB 2304 (chapter 19, Laws of 2012) during the 2012 legislative session. The bill amends chapters 43.200 and 70.98 RCW to transfer authority for the low-level radioactive waste site use permit program from ecology to the department. This allows the department to review permit applications and issue site use permits. The department is proposing to adopt ecology's existing rules without material change and make some editorial changes.

The department's proposed rules replace the classification ratio with the actual fee amounts that are calculated when the current base fee of \$424 is applied to the classification ratio. This change does not increase or decrease the fees.

Reasons Supporting Proposal: Before the legislation passed, the department and ecology shared regulatory oversight of the generators and brokers who use the commercial low-level radioactive waste facility. Transferring the site use permit program to the department streamlines agency oversight and is consistent with the department's authority and responsibilities at the low-level radioactive waste site.

Statutory Authority for Adoption: RCW 70.98.085.

Statute Being Implemented: RCW 70.98.050 and 70.98.085.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mikel J. Elsen, 111 Israel Road S.E. Tumwater, WA 98501, (360) 236-3241.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact state-

ment is not required for proposed rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state statutes, the rules of other Washington state agencies, or as referenced by Washington state law, national consensus codes that generally establish industry standards.

This rule adopts, without material change, ecology's site use permit rules from chapter 173-326 WAC.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state statutes, the rules of other Washington state agencies, or as referenced by Washington state law, national consensus codes that generally establish industry standards when the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

This rule adopts, without material change, ecology's site use permit rules from chapter 173-326 WAC.

May 17, 2013

John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 11-03-020, filed 1/7/11, effective 2/7/11)

**WAC 246-249-010 Definitions, abbreviations, and acronyms.** ~~((As used in this chapter, the following definitions apply:))~~ The definitions, abbreviations, and acronyms in this section and in WAC 246-220-010 apply throughout this chapter unless the context clearly indicates otherwise.

(1)(a) **"Broker"** means a person who performs one or more of the following functions for a radioactive waste generator:

~~((a))~~ (i) Arranges for transportation of the radioactive waste;

~~((b))~~ (ii) Collects ~~((and/))~~ or consolidates shipments of radioactive waste (waste collector);

~~((c))~~ (iii) Processes radioactive waste in some manner ~~((, not including carriers whose sole function is to transport radioactive waste))~~ (waste processor);

(iv) Packages radioactive waste for disposal (waste packager).

(b) Does not mean a carrier whose sole function is to transport radioactive waste.

(2) ~~(( "By-product material" means:))~~

~~((a))~~ Any radioactive material ~~((except special nuclear material))~~ yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

~~((b))~~ The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute by-product material within this definition;

~~((c))~~(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or

after August 8, 2005, for use for a commercial, medical, or research activity; or

~~((ii))~~ Any material that:

~~((A))~~ Has been made radioactive by use of a particle accelerator; and

~~((B))~~ Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

~~((d))~~ Any discrete source of naturally occurring radioactive material, other than source material, that:

~~((i))~~ The Nuclear Regulatory Commission, in consultation with the administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

~~((ii))~~ Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

~~((3))~~ **"Chelating agent"** means amine polycarboxylic acids ~~((e.g.,))~~, such as EDTA~~((;))~~ and DTPA~~((;))~~; hydroxycarboxylic acids~~((;))~~; and polycarboxylic acids ~~((e.g.,))~~, such as citric acid, carbonic acid, and glucinic acid.

~~((4))~~ ~~((3))~~ **"Chemical description"** means a description of the principal chemical characteristics of a radioactive waste.

~~((5))~~ ~~((4))~~ **"Computer-readable medium"** means the regulatory agency's computer can transfer the information from the medium into its memory.

~~((6))~~ ~~((5))~~ **"Consignee"** means the designated receiver of the shipment of radioactive waste.

~~((7))~~ ~~((6))~~ **"Decontamination facility"** means a facility operating under a commission or agreement state license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and, for purposes of this section, is not considered to be a consignee for radioactive waste shipments.

~~((8))~~ ~~((7))~~ **"Disposal container"** means a container principally used to confine radioactive waste during disposal operations at a land disposal facility (also see "high integrity container"). Note that for some shipments, the disposal container may be the transport package.

~~((9))~~ ~~((8))~~ **"DOT"** means the United States Department of Transportation.

~~((10))~~ ~~((9))~~ **"EPA"** means the United States Environmental Protection Agency.

~~((11))~~ ~~((10))~~ **"EPA identification number"** means the number assigned by the EPA administrator under 40 C.F.R. Part 263.

~~((12))~~ ~~((11))~~ **"Generator"** means any ~~((entity))~~ person including a licensee operating under a commission or agreement state license who:

(a) Is a waste generator as defined in this part; or

(b) Is the entity or licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

~~((13))~~ ~~((12))~~ **"High integrity container ~~((HIC))~~"** means a container commonly designed to meet the structural

stability requirements of this chapter, and to meet department of transportation Type A package requirements.

~~((12))~~ (13) **"Land disposal facility"** means the land, buildings, and equipment which are intended to be used for the disposal of radioactive wastes. For the purposes of this chapter, a land disposal facility does not include a geologic repository.

~~((13))~~ (14) **"Motor vehicle"** means any vehicle, truck, tractor, semi-trailer, or trailer (or any permitted combination of these), driven by mechanical power and used upon the highways to carry property.

~~((14))~~ (15) **"Motor common carrier"** means a person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both.

~~((15))~~ (16) **"Motor contract carrier"** means a person other than a common carrier providing motor vehicle transportation of property for compensation under continuing agreements with one or more persons.

~~((16))~~ (17) **"Motor private carrier"** means a person, other than a motor carrier, transporting property by motor vehicle when the person is the owner, lessee, or bailee of the property being transported; and the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

~~((17))~~ (18) **"Motor carrier"** means a motor common carrier and a motor contract carrier.

~~((18))~~ (19) **"NARM (naturally occurring and accelerator produced material)"** ~~("NARM")~~ means any radioactive material of natural or accelerator origin; but does not include by-product, source or special nuclear material. Diffuse NARM is low activity NARM that has less than 2 nCi/g of 226-Ra.

~~((19))~~ (20) **"NRC Forms 540, 540A, 541, 541A, 542, and 542A"** are official NRC Forms referenced in this section. Licensees need not use originals of these NRC Forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, NRC Forms 541 (and 541A) and NRC Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media must have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

~~((20))~~ (21) **"Nuclear utility"** means any operating or inactive nuclear utility.

(22) **"Package"** means the assembly of components necessary to ensure compliance with the packaging requirements of DOT regulations, together with its radioactive contents, as presented for transport.

~~((21))~~ (23) **"Physical description"** means the items on NRC Form 541 that describe a radioactive waste.

~~((22) "Radioactive waste" means either or both low-level radioactive waste and naturally occurring and accelerator produced radioactive material.~~

~~(23))~~ (24) **"Residual waste"** means radioactive waste resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

~~((24))~~ (25) **"Rollover volume"** means the difference, in a calendar year, between the volume of NARM disposed at the disposal site and the site volume limit ~~(set forth)~~ established under WAC 246-249-080(4).

~~((25))~~ (26) **"Shipper"** means the licensed entity ~~((+e-))~~ including, but not limited to, the waste generator, waste collector, or waste processor~~(s)~~, who offers radioactive waste for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator.

~~((26))~~ (27) **"Shipment"** means the total radioactive waste material transported in one motor vehicle.

~~((27))~~ (28) **"Shipping paper"** means NRC Form 540 and, if required, NRC Form 540A which includes the information required by DOT in 49 C.F.R. Part 172.

~~((28))~~ (29) **"Transuranic waste"** means material contaminated with elements that have an atomic number greater than 92.

~~((29))~~ (30) **"Uniform Low-Level Radioactive Waste Manifest or uniform manifest"** means the combination of NRC Forms 540, 541, and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

~~((30) "Waste" means those low-level radioactive wastes containing source, special nuclear, or by-product material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in WAC 246-249-010 (2)(b), (c), and (d).)~~

(31) **"Waste collector"** means an entity, operating under a commission or agreement state license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

(32) **"Waste description"** means the physical, chemical and radiological description of a radioactive waste as called for on NRC Form 541.

(33) **"Waste generator"** means an entity, operating under a commission or agreement state license, who:

(a) Possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use; and

(b) Transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal.

(c) A licensee performing processing or decontamination services may be a "waste generator" if the transfer of radioactive waste from its facility is defined as "residual waste."

(34) **"Waste processor"** means an entity, operating under a commission or agreement state license, whose principal purpose is to process, repackage, or otherwise treat radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility.

(35) **"Waste type"** means a waste within a disposal container having a unique physical description (i.e., a specific

waste descriptor code or description; or a waste sorbed on or solidified or stabilized in a specifically defined media).

AMENDATORY SECTION (Amending WSR 95-13-094, filed 6/21/95, effective 7/22/95)

**WAC 246-249-020 Site use permit.** (1) Each generator and each broker of radioactive waste shall:

(a) Possess ~~((a))~~ an active valid, and unencumbered site use permit prior to the shipment of such waste to, or the disposal of such waste at any commercial disposal facility in the state of Washington ((and shall have complied with the permit requirements of the department of ecology)).

~~((2) Suspension or revocation of permit.~~

~~(a) The failure of one or more packages in a shipment of waste to be in compliance with one or more of the requirements of the license issued to the commercial low-level radioactive waste disposal site operator, Title 246 WAC, the United States Nuclear Regulatory Commission, the United States Department of Transportation, or conditions of the disposal site operator's radioactive materials license may cause the suspension of the site use permit of the responsible generator and/or broker.~~

~~(b) The site use permit of a generator and/or broker may be suspended or revoked if any other licensed commercial low-level radioactive waste disposal site in the United States has refused to accept waste from that generator or broker.~~

~~(c) A suspended site use permit may be reinstated provided:~~

~~(i) The generator and/or broker submits a quality assurance procedure designed to correct previous problems and to achieve and maintain compliance with all applicable requirements; and~~

~~(ii) A point-of-origin inspection by the state of Washington, of the generator's and/or broker's waste management activities, indicates compliance with all applicable requirements and regulations.~~

~~(3) Brokered shipments:~~

~~(a) It is the broker's responsibility to assure that)~~

~~(b) Renew the site use permit annually to maintain the permit in active status.~~

~~(2) If a generator or broker does not renew the permit:~~

~~(a) The department shall place the permit in inactive status; and~~

~~(b) The generator or broker shall pay a reinstatement fee in addition to the annual site use permit fee as required in WAC 246-254-165.~~

~~(3) Each generator and each broker of radioactive waste shall:~~

~~(a) Pay the site use permit fees required in WAC 246-254-165;~~

~~(b) Submit a completed application for a site use permit to the department on a form provided by the department;~~

~~(c) Ensure that each application is signed by the individual broker or generator or by an individual authorized to sign on behalf of the entity generating or brokering the waste; and~~

~~(d) Submit the application for site use permit renewal a minimum of four weeks prior to the expiration date of the permit.~~

~~(4) Number of permits required by each generator.~~

(a) Generators who own multiple facilities may apply for one site use permit provided:

(i) All facilities are within the same state; and

(ii) The generator has identified a single contact person who is responsible for responding to the department on matters pertaining to waste shipments for all of the facilities.

(b) Generators who own multiple facilities shall apply for separate site use permits for each facility when:

(i) The facilities are located in different states; or

(ii) The generator has identified different contact persons for each facility who are responsible for responding to the department on matters pertaining to waste shipments.

(c) When a facility both generates and brokers waste, each generator and broker shall possess separate generator and broker site use permits.

(5) Each broker shall:

(a) Ensure a generator of waste has ((a)) an active, valid, and unencumbered site use permit prior to shipment of waste for disposal((-);

(b) ((A broker,)) Ensure the waste will arrive at the disposal facility prior to the expiration date of the generator's site use permit;

(c) Ensure all radioactive waste contained within a shipment accepted for disposal at any commercial radioactive waste disposal facility in the state of Washington is traceable to the original generators and states, regardless of whether the waste is shipped directly from the point of generation to the disposal facility or shipped through a licensed service facility, such as a facility for recycling, processing, compacting, incinerating, collecting, or brokering waste; and

(d) As consignor, assumes co-responsibility with a generator for all aspects of that generator's waste until it can be documented to the department's satisfaction that the broker's sphere of responsibility was limited.

(6) Any generator or broker shipping waste for disposal at the commercial low-level radioactive waste disposal site that was originally generated in the Rocky Mountain compact region shall attach to the shipping manifest and provide to the disposal site operator a copy of the letter granting approval to export waste from the Rocky Mountain compact region.

(7) Suspension or revocation of permit.

(a) The department may suspend the site use permit of the responsible generator, or broker, or both the generator and broker if one or more packages in a shipment of waste does not meet one or more of the requirements of the license issued to the commercial low-level radioactive waste disposal site operator, Title 246 WAC, NRC regulations, DOT regulations, or the conditions of the disposal site operator's radioactive materials license.

(b) The site use permit of a generator or broker may be suspended or revoked if any other licensed commercial low-level radioactive waste disposal site in the United States has refused to accept waste from that generator or broker.

(c) A suspended site use permit may be reinstated provided:

(i) The generator or broker whose permit has been suspended submits a quality assurance procedure designed to correct previous problems and to achieve and maintain compliance with all applicable requirements; and

(ii) A point-of-origin inspection by the state of Washington of the waste management activities of the generator or broker whose permit has been suspended, indicated compliance with all applicable requirements and regulations.

(8) Additional generator and broker requirements. Permittees shall provide additional information as requested by the department for the safe management of radioactive waste in the state of Washington.

NEW SECTION

**WAC 246-254-165 Low-level radioactive waste site use permit fees for generator or broker.** (1) The following fees apply to a generator as defined in WAC 246-249-010:

(a) A generator with an active site use permit, other than a nuclear utility, shall pay an annual site use permit fee based on the total annual volume (cubic feet) of waste disposed during the previous calendar year. The fees by volume of waste are in Table 1 of this section.

(b) A new generator, other than a nuclear utility, shall pay an annual site use permit fee based on the estimated volume (cubic feet) of waste requiring disposal during the first calendar year. The fees by volume of waste are in Table 1 of this section.

(i) If a new generator's waste deposits exceed the generator's estimated volume, the department shall suspend the site use permit until the generator pays the additional fee amount corresponding to the actual volume of waste disposed.

(ii) If a new generator's waste deposits are less than the generator's estimated volume, consistent with WAC 246-08-560, the department shall refund the fee amount paid in excess of the required fee amount.

(c) A nuclear utility shall pay an annual site use permit fee of forty-two thousand four hundred dollars.

(d) A generator, other than a nuclear utility, who fails to renew an annual site use permit shall pay an annual site use permit fee based on the volume of waste disposed during the most recent calendar year in which waste was disposed and shall pay a reinstatement fee of one thousand dollars.

(e) A nuclear utility that fails to maintain annual renewal of the site use permit shall pay an annual site use permit fee of forty-two thousand four hundred dollars and shall pay a reinstatement fee of one thousand dollars.

**Table 1: Fees by Volume of Waste**

Classification	Fee
< 50 cubic feet	\$424
≥ 50 < 500 cubic feet	\$848
≥ 500 < 1000 cubic feet	\$2,120
≥ 1000 < 2500 cubic feet	\$4,240
≥ 2500 cubic feet	\$14,840

(2) The following fees apply to a broker as defined in WAC 246-249-010:

(a) A broker shall pay an annual site use permit fee of one thousand dollars.

(b) A broker who fails to maintain annual renewal of the site use permit shall pay an annual site use permit fee of one

thousand dollars and shall pay a reinstatement fee of one thousand dollars.

**WSR 13-11-106**  
**WITHDRAWAL OF PROPOSED RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**  
(By the Code Reviser's Office)  
[Filed May 21, 2013, 8:06 a.m.]

WAC 284-43-875 and 284-43-880, proposed by the office of insurance commissioner in WSR 12-21-136 appearing in issue 12-22 of the State Register, which was distributed on November 21, 2012, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 13-11-121**  
**PROPOSED RULES**  
**BOARD OF ACCOUNTANCY**  
[Filed May 21, 2013, 1:38 p.m.]

Supplemental Notice to WSR 12-23-068.

Preproposal statement of inquiry was filed as WSR 12-19-057.

Title of Rule and Other Identifying Information:  
WAC 4-30-134 What are the CPE requirements for individuals?

Hearing Location(s): The Doubletree Hotel Seattle Airport, Cascade 12 Room, 18740 International Boulevard, SeaTac, WA, on July 22, 2013, at 9:00 a.m.

Date of Intended Adoption: July 22, 2013.

Submit Written Comments to: Richard C. Sweeney, Executive Director, P.O. Box 9131, Olympia, WA 98507-9131, e-mail info@cpaboard.wa.gov, fax (360) 664-9190, by July 15, 2013.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by July 15, 2013, TTY (800) 833-6388 or (800) 833-6385 (TeleBraille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 4-30-134: (1) To require at least sixty percent of the required ethics continuing professional education (CPE) course content, presentation time, and commentary to specifically include information on the Public Accountancy Act, the board's rules and policies, variances between Washington state law and the AICPA Code of Conduct, and case study scenarios demonstrating how to comply with the ethics requirements. The remaining forty percent of the course content, presentation time, and commentary may cover AICPA or other professionally based ethics. (2) To specify the process and associated penalties for license renewal applicants that self-report CPE deficiencies during renewal [renewal].



Reasons Supporting Proposal: After considering comments and testimony at hearing on the rule-making proposal in January 2013, the board determined it is necessary to ensure that authors of the required four hours of board approved CPE in ethics and regulation present and discuss content that is specific to Washington state ethics as it pertains to certified public accountants (CPAs) yet allow credentialed persons to obtain ethics CPE that is related to the individual's required workplace competencies. The board revised the proposal accordingly.

The board by policy has set the requirements for CPAs who fail to timely complete the required CPE to renew their credential without lapse. The proposal moves the requirements from policy to rule.

Other changes in the proposal are for clarity. The board is not proposing to change the basic CPE requirements.

Statutory Authority for Adoption: RCW 18.04.055 (7), (14), 18.04.215(5).

Statute Being Implemented: RCW 18.04.055 (7), (14), 18.04.215(5).

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

Name of Proponent: The Washington state board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Richard C. Sweeney, CPA, 711 Capitol Way South, Suite 400, Olympia, WA, (360) 586-0163.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not have more than minor economic impact on business.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.-328 (5)(a).

May 20, 2013  
Richard C. Sweeney  
Executive Director

AMENDATORY SECTION (Amending WSR 11-07-070, filed 3/22/11, effective 4/22/11)

**WAC 4-30-134 What are the continuing professional education (CPE) requirements for individuals? (1) ~~((The following CPE is required for))~~ Qualifying continuing professional education (CPE) must:**

(a) Contribute to the professional competency in the individual's area(s) of professional practice or relative to the individual's current work place job functions;

(b) Maintain knowledge of current ethical and other regulatory requirements; and

(c) Be completed by individuals during ~~((the three calendar year period prior to renewal))~~ any board specified CPE reporting period. A CPE reporting period is a calendar year time period beginning in the calendar year a credential is first issued by this board and ending on December 31st of the subsequent third calendar year; for example, if your license was issued any time during calendar year one (2013), the CPE reporting period ends on December 31st of calendar year three (2015).

**(2) General CPE requirements for renewal of valid credentials:**

~~(a) ((An individual licensed to practice in this state))~~ A licensee must complete a total of 120 CPE hours, including 4 CPE credit hours in ~~((an approved Washington))~~ ethics ~~((and regulations course))~~ meeting the requirements of subsection ~~((3))~~ (6) of this section. The total 120 CPE hours requirement is limited to no more than 24 CPE credit hours in nontechnical subject areas. ~~((All qualifying CPE hours must be taken after the date your initial CPA license was issued;))~~

~~(b) A CPA-Inactive certificate holder or a resident nonlicensee firm owner must complete 4 CPE credit hours in ethics meeting the requirements of subsection ~~((3))~~ (6) of this section~~((; and)).~~~~

~~(c) Individuals ~~((holding))~~ eligible to exercise practice privileges are exempt from the CPE requirements of this section.~~

~~**((2) CPE requirements for renewal of a license that was issued less than three years before the end of a CPA-Inactive certificate renewal cycle:** When you convert your status from a CPA-Inactive certificate holder to a licensee, your CPE reporting period (the three calendar year period prior to renewal) and renewal cycle will remain the same. The CPE requirements for renewal are as follows:~~

~~(a))~~ **(3) Exceptions to the general CPE requirements: CPE requirements for the initial CPE renewal period after conversion of a CPA-Inactive certificate to a Washington state license:**

(a) If your license was issued during the first calendar year of your CPE reporting period, you must have completed 80 CPE credit hours which is limited to 16 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection ~~((3))~~ (6) of this section prior to December 31st of the calendar year following the calendar year in which your license was initially issued.

(b) If your license was issued during the second calendar year of your CPE reporting period, you must have completed 40 CPE credit hours which is limited to 8 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection ~~((3))~~ (6) of this section.

(c) If your license was issued during the third calendar year of your CPE reporting period, you must have completed 4 CPE credit hours in ethics meeting the requirements of subsection ~~((3))~~ (6) of this section.

~~((3))~~ **(4) For the following circumstances, you must have completed the requirements of subsection (2)(a) of this section within the thirty-six-month period immediately preceding the date an application is submitted to the board; however, the 4 CPE hours in ethics meeting the requirements of subsection (6) of this section must be completed within the six-month period immediately preceding the date your application and the CPE documentation is submitted to the board:**

(a) You are applying to reactivate a license out of retirement; or

(b) You are a CPA-Inactive certificate holder applying for a license; or

(c) You want to return to your previously held status as a licensee; or

(d) You are applying for reinstatement of a lapsed, suspended, or revoked license.

(5) For the following circumstances, you must have completed the 4 CPE hours in ethics meeting the requirements of subsection (6) of this section within the six-month period immediately preceding the date your application and the CPE documentation is submitted to the board:

(a) You are applying to reactivate a CPA-Inactive certificate out of retirement; or

(b) You are applying to reinstate a lapsed, suspended, or revoked CPA-Inactive certificate, or registration as a resident nonlicensee firm owner.

(6) CPE in ethics and regulation ~~((s applicable to practice in Washington state))~~:

(a) During each CPE reporting period **after initial licensing** all individuals licensed in this state, ~~((individual CPA-Inactive certificate holders in this state, and))~~ including nonresident and individuals from foreign countries who received initial Washington state licenses by reciprocity, CPA-Inactive certificate holders, and individuals initially recognized as resident nonlicensee firm owners, are required to complete 4 qualifying CPE credit hours in approved ethics and regulations ~~((with specific application to the practice of public accounting))~~ in Washington state. ~~((In order to be approved by the board,))~~

(b) The content of the course must be specific to the laws and rules applicable to the regulatory framework in Washington state including the administrative requirements for an individual's initial and continued use of restricted titles in this state.

(c) All CPE ~~((sponsor or instructor))~~ authors must submit ~~((documentation associated with the ethics and regulations CPE))~~ course materials for this course to the executive director of the board for approval ~~((and the sponsor or instructor must obtain written approval from the board))~~ prior to delivery of the content for credit.

(d) The ethics and regulations ~~((CPE))~~ course materials must cover all of the following topics, and ~~((the ethics and regulations CPE))~~ instructors of approved courses must substantially address these topics in their presentations:

~~((a))~~ Chapter 18.04 RCW and Title 4 WAC. The CPE must include (i) General level information on the AICPA Code of Conduct.

(ii) General level information on the Public Accountancy Act, the board's rules, policies, including recent or pending changes therein, and the rule-making process.

~~((b))~~ (iii) Emphasis must be placed on variances or key differences between Washington state law (chapter 18.04 RCW), this board's rules (Title 4 WAC), and the AICPA Code of Conduct.

(iv) Detailed information on the following:

(A) WAC 4-30-026 How can I contact the board?

~~((e))~~ (B) WAC 4-30-032 Do I need to notify the board if I change my address?

~~((d))~~ (C) WAC 4-30-034 Must I respond to inquiries from the board?

~~((e))~~ (D) WAC 4-30-040 through 4-30-048 Ethics and prohibited practices ~~((The CPE must include detailed information on each rule and all)), including related board policies, if any.~~

~~((f))~~ (E) WAC ~~((4-30-103))~~ 4-30-130 Series—Continuing competency ~~((The CPE must include detailed information on each rule and all)), including related board policies, if any.~~

~~((g))~~ (F) WAC 4-30-142 What are the bases for the board to impose discipline?

~~((h))~~ AICPA Code of Conduct. The CPE must include general level information on the AICPA Code of Conduct.

(i) Variances or key differences between Washington state law (chapter 18.04 RCW), this board's rules (Title 4 WAC) and the AICPA Code of Conduct.

~~((j))~~ (G) Other topics or information as defined by board policy.

~~((4))~~ **CPE requirements to renew a license or CPA-Inactive certificate out of retirement:**

(a) In order to renew a license out of retirement, you must meet the CPE requirements of subsection (1)(a) of this section within the thirty six month period immediately preceding the date the renewal application is submitted to the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your renewal application is submitted to the board.

(b) In order to renew a CPA-Inactive certificate out of retirement, you must meet the CPE requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your renewal application is submitted to the board.

~~((5))~~ **CPE requirements for a CPA-Inactive certificate holder to either qualify to apply for a license or return to their previously held status as a licensee:** If you hold a valid CPA-Inactive certificate and you wish to apply for a license or you want to return to your previously held status as a licensee, you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date your application is submitted to the board.

~~((6))~~ **Reinstatement of a lapsed, suspended, or revoked license, certificate, or registration as resident nonlicensee firm owner:**

(a) If you seek to reinstate a lapsed, suspended, or revoked license, you must satisfy the requirements of subsection (1)(a) of this section within the thirty six month period immediately preceding the date the application for reinstatement is submitted to the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your application for reinstatement is submitted to the board.

(b) If you seek to reinstate a lapsed, suspended, or revoked CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must satisfy the requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your application for reinstatement is submitted to the board.

~~((7))~~ **Reciprocity:** If you are applying for an initial Washington state CPA license under the reciprocity provisions of the act, you must satisfy the requirements in subsection (1)(a) of this section, after you were licensed as a CPA and within the thirty-six month period immediately preceding the date

your application is submitted to the board. For purposes of initial licensure, you do not need to satisfy the ethics requirements of subsection (1)(a) of this section. Thereafter, in order to renew your Washington state license, you must comply with all the renewal requirements in subsection (1)(a) of this section.

(8)) (e) The course must also include case study scenarios demonstrating how to comply with the relevant provisions of the AICPA Code of Conduct and the board's statutory or regulatory framework when faced with ethical situations that might occur when offering or performing a specific type of professional service in the practice of public accounting or as a professionally regulated person not in the practice of public accounting.

(f) At least sixty percent of the course material content, presentation time, and commentary must include general level information on the Public Accountancy Act, the board's rules and policies, including recent or pending changes thereto, variances of key differences between Washington state law (chapter 18.04 RCW), the board's rules (Title 4 WAC), and the AICPA Code of Conduct, and scenarios demonstrating the different compliance outcomes that might result because the board's rules prevail when the board's rules vary from the AICPA Code of Professional Conduct and/or related official AICPA interpretations.

**(7) CPE extension requests:**

(a) In order to renew your license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must complete the required CPE by ((the end of the CPE reporting period)) December 31st of the calendar year preceding the calendar year of your renewal unless you can demonstrate your failure to meet the CPE requirements was due to reasonable cause.

(b) The board may provide limited extensions to the CPE requirements for reasons of individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment. You must request such an extension in writing by ((the end of the CPE reporting period)) December 31st of the calendar year preceding the calendar year of your renewal. The request must include justification for the request and identify the specific CPE you plan to obtain to correct your CPE deficiency.

(c) A form useful for this purpose is available from the board's web site or will be provided to you upon request.

**(8) Self-reported deficiencies:**

(a) If you fail to file a timely request for extension but you self-report a CPE deficiency to the board during the renewal period January 1st through June 30th of the renewal year, you will be permitted to continue to use the restricted title during the renewal period provided you:

(i) Submit to the board, in writing, the specific CPE plan to obtain to correct the CPE deficiency on or before June 30th of the renewal period;

(ii) Timely complete the CPE sufficient to correct the deficiency;

(iii) Timely submit certificates of completion for the subject CPE taken to the board; and

(iv) Pay the fee for reinstatement of a lapsed credential on or before June 30th of the renewal year.

(b) CPE deficiencies taken by June 30th of the renewal year under this subsection will be carried back to the reporting period ending on December 31st of the preceding calendar year and be subject to CPE audit in the next renewal period to ensure that inadvertent double counting does not occur.

**WSR 13-11-124**

**WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed May 21, 2013, 3:33 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-56-250 from WSR 13-02-094, which was filed on January 2, 2013. The Washington fish and wildlife commission did not adopt any changes to that WAC.

Lori Preuss  
Rules Coordinator

**WSR 13-11-131**

**PROPOSED RULES  
FOREST PRACTICES BOARD**

[Filed May 22, 2013, 8:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-06-013.

Title of Rule and Other Identifying Information: Adaptive Management program reform (WAC 222-12-045), amend rules to incorporate recommendations resulting from the forest practices habitat conservation plan settlement agreement.

Hearing Location(s): Department of Natural Resources (DNR), 713 East Bowers, Ellensburg, (509) 925-8510, on June 25, 2013, at 6:00 p.m.; and at the Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, (360) 902-1400, on June 27, 2013, at 6:00 p.m.

Date of Intended Adoption: August 13, 2013.

Submit Written Comments to: Patricia Anderson, DNR, P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@dnr.wa.gov, fax (360) 902-1428, by June 28, 2013.

Assistance for Persons with Disabilities: Contact forest practices division at (360) 902-1400, by June 18, 2013, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The adaptive management program was created to provide science-based recommendations and technical information to assist the forest practice[s] board in amending rules and guidance for aquatic resources to achieve the resource goals and objectives of the forests and fish report.

The rule changes amend the adaptive management program (chapter 222-12 WAC) by identifying nine consensus-based caucus representatives, shortening the dispute resolu-

tion process and prioritizing the cooperative monitoring evaluation and research committee (CMER) work plan.

Reasons Supporting Proposal: These rules fulfill the agreements outlined in the forest practice habitat conservation plan settlement agreement between conservation caucus, State of Washington and Washington Forest Protection Association dated May 24, 2012.

Statutory Authority for Adoption: RCW 76.09.040.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Marc Engel, 1111 Washington Street S.E., Olympia, (360) 902-1390; Implementation: Donelle Mahan, 1111 Washington Street S.E., Olympia, (360) 902-1405; and Enforcement: Mary McDonald, 1111 Washington Street S.E., Olympia, (360) 902-1398.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule proposal will not impose costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The rule amendments clarify internal government operations and are not subject to violation by a nongovernment entity.

May 20, 2013

Aaron Everett

Chair

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

**WAC 222-12-045 \*Adaptive management program.** (~~(\*Adaptive management program.))~~ In order to further the purposes of chapter 76.09 RCW, the board has adopted and will manage a formal science-based program, as set forth in WAC 222-08-160(2). Refer to board manual section 22 for program guidance and further information.

(1) **Purpose:** The purpose of the program is to provide science-based recommendations and technical information to assist the board in determining if and when it is necessary or advisable to adjust rules and guidance for aquatic resources to achieve resource goals and objectives. The board may also use this program to adjust other rules and guidance. The goal of the program is to affect change when it is necessary or advisable to adjust rules and guidance to achieve the goals of the forests and fish report or other goals identified by the board. There are three desired outcomes: Certainty of change as needed to protect targeted resources; predictability and stability of the process of change so that landowners, regulators and interested members of the public can anticipate and prepare for change; and application of quality controls to study design and execution and to the interpreted results.

(2) **Program elements:** By this rule, the board establishes an active, ongoing program composed of the following initial elements, but not to exclude other program elements as needed:

(a) **Key questions and resource objectives:** Upon receiving recommendations from the TFW policy committee,

or similar collaborative forum, the board will establish key questions and resource objectives and prioritize them.

(i) Projects designed to address the key questions shall be established in the order and subject to the priorities identified by the board.

(ii) Resource objectives are intended to ensure that forest practices, either singularly or cumulatively, will not significantly impair the capacity of aquatic habitat to:

(A) Support harvestable levels of salmonids;

(B) Support the long-term viability of other covered species; or

(C) Meet or exceed water quality standards (protection of beneficial uses, narrative and numeric criteria, and anti-degradation).

(iii) Resource objectives consist of functional objectives and performance targets. Functional objectives are broad statements regarding the major watershed functions potentially affected by forest practices. Performance targets are the measurable criteria defining specific, attainable target forest conditions and processes.

(iv) Resource objectives are intended for use in adaptive management, rather than in the regulatory process. Best management practices, as defined in the rules and manual, apply to all forest practices regardless of whether or not resource objectives are met at a given site.

(b) **Participants:** The board (~~(will))~~ manages the program and (~~(has empowered))~~ empowers the following entities to participate in the program:

- The cooperative monitoring evaluation and research committee (CMER)(~~(;))~~;

- The TFW policy committee (and/or similar collaborative forum)(~~(;))~~;

- The adaptive management program administrator(~~(;))~~; and

- Other participants as directed to conduct the independent scientific peer review process. The program will strive to use a consensus-based approach to make decisions at all stages of the process. Specific consensus-decision stages will be established by CMER and approved by the board. Ground rules will follow those established by the TFW process as defined in the board manual.

(i) **CMER.** By this rule, the board establishes a cooperative monitoring evaluation and research (CMER) committee to impose accountability and formality of process, and to conduct research and validation and effectiveness monitoring to facilitate achieving the resource objectives. The purpose of CMER is to advance the science needed to support adaptive management. CMER also has ongoing responsibility to continue research and education in terrestrial resource issues. CMER will be made up of members that have expertise in a scientific discipline that will enable them to be most effective in addressing forestry, fish, wildlife, and landscape process issues. Members will represent timber landowners, environmental interests, state agencies, county governments, federal agencies and tribal governments from a scientific standpoint, not a policy view. CMER members will be approved by the board. This will not preclude others from participating in and contributing to the CMER process or its subcommittees. CMER shall also develop and manage as appropriate:

(A) Scientific advisory groups and subgroups;

(B) Research and monitoring programs;

(C) A set of protocols and standards to define and guide execution of the process including, but not limited to, research and monitoring data, watershed analysis reports, interdisciplinary team evaluations and reports, literature reviews, and quality control/quality assurance processes;

(D) A baseline data set used to monitor change; and

(E) A process for policy approval of research, monitoring, and assessment projects and use of external information, including the questions to be answered and the timelines.

(F) A biennial research, monitoring, and assessment work plan to be presented to the policy committee at their regular April meeting beginning in 2015 and at least every two years thereafter.

(ii) **TFW policy committee (policy committee).** ((TFW, or a similar collaborative forum, is managed by a policy committee (hereafter referred to in this section as "policy").) The policy committee is established to consider the findings of CMER research and monitoring; and to make recommendations to the board related to forest practices rules and/or the board manual, and other guidance. Policy committee membership ((is self-selecting, and at a minimum should include representatives of the following)) consists of caucus principals or their representatives from the following nine caucuses: ((Timber landowners (-)) Industrial ((and)) private timber landowners; nonindustrial private timber landowners((+)); environmental community; western Washington tribal governments; eastern Washington tribal governments; county governments; department of natural resources; state departments ((including)) of fish and wildlife, and ecology((-, and natural resources)); and federal agencies (including National Marine Fisheries Service, U.S. Fish and Wildlife Service, and U.S. Environmental Protection Agency ((and U.S. Forest Service)). Policy members will participate without compensation or per diem).

Policy committee members or their representatives are the primary participants for discussion and decisions at policy committee meetings, technical or scientific staff may attend policy committee meetings for consultation. Each caucus of the policy committee is allowed one vote on any action before the policy committee. The policy committee will act as a consensus-based body.

Beginning in April 2014, the policy committee shall, among other responsibilities, and in cooperation with CMER, prepare for presentation to the board at their regular May meeting:

(A) A CMER master project schedule prioritizing all CMER research and monitoring projects through 2031;

(B) Assurances that the CMER work plan projects are scheduled according to the CMER master project schedule;

(C) A review and update of the CMER master project schedule at least every four years; and

(D) Assurances that all of the projects on the master project schedule, as amended by the board, will be completed by 2040.

(iii) **Adaptive management program administrator (program administrator).** The department will employ a full-time independent program administrator to oversee the program and support CMER. The program administrator will

have credentials as a program manager, scientist, and researcher. The program administrator will:

(A) Make reports to the board and have other responsibilities as defined in the board manual.

(B) Work with the policy committee and CMER to develop the CMER master project schedule and present it to the board at their regular May 2014 meeting;

(C) Report to the board every two years, beginning at their regular May 2015 meeting on:

(I) Progress made to implement the CMER master project schedule and recommended revisions;

(II) The status of ongoing projects including adherence to scheduled timelines; and

(III) Policy committee's responses to all final CMER reports.

(iv) **Forest practices board (board).** The board, among other responsibilities, shall:

(A) Require the program to complete work according to the CMER master project schedule;

(B) Determine whether the program is in substantial compliance with the CMER master project schedule every two years, beginning at the regular August 2014 meeting; and

(C) Notify the National Marine Fisheries Service and the U.S. Fish and Wildlife Service by letter within thirty days after their regular meeting if the board determines the program is not in substantial compliance with the CMER master project schedule.

(c) **Independent scientific peer review process.** By this rule, the board establishes an independent scientific peer review process to determine if the scientific studies that address program issues are scientifically sound and technically reliable; and provide advice on the scientific basis or reliability of CMER's reports. Products that must be reviewed include final reports of CMER funded studies, certain CMER recommendations, and pertinent studies not published in a CMER-approved, peer-reviewed journal. Other products that may require review include, but are not limited to, external information, work plans, requests for proposal, subsequent study proposals, the final study plan, and progress reports.

(d) **Process:** The following stages will be used to affect change for managing adaptive management proposals and approved projects. If consensus cannot be reached by participants at any stage, the issue will be addressed within the dispute resolution process.

(i) **Proposal initiation:** Adaptive management proposals can be initiated at this stage by any of the participants listed in (2)(b) of this subsection to the program administrator, or initiation may be proposed by the general public at board meetings. Proposals must provide the minimum information as outlined in the board manual and demonstrate how results of the proposal will address key questions and resource objectives or other program rule and/or guidance issues. The board may initiate proposals or research questions in the course of fulfilling their duties according to statute.

(ii) **Proposal approval and prioritization:** The program administrator will manage the proposal approval and prioritization process at this stage and consult with CMER on the program workplan. CMER proposals will be forwarded by the program administrator to policy and then to the board. The board will make the final determination regarding pro-

posals and prioritization. The board will act on proposal approval and prioritization in a timely manner.

(iii) **CMER implementation of proposal:** Board approved proposals are systematically implemented through CMER at this stage by the program administrator.

(iv) **Independent scientific peer review:** An independent scientific peer review process will be used at identified points within this stage of implementation depending upon the study and will be used on specified final studies or at the direction of the board.

(v) **CMER committee technical recommendations:** Upon completion, final CMER reports and information will be forwarded at this stage by the program administrator to policy in the form of a report that includes technical recommendations and a discussion of rule and/or guidance implications.

(vi) **Policy committee petitions ~~((for amendment))~~ and recommendations to the board:** Upon receipt of ~~((the))~~ a CMER report or a requested action by the board, the policy committee will prepare a report for the board outlining recommended actions including: Need for additional research; program rule ~~((amendments))~~ petitions; and/or guidance recommendations ~~((in the form of petitions for amendment))~~. When completed, the recommendations, including rule petitions and the original CMER report and/or other information as applicable will be forwarded by the program administrator to the board for review and action. Policy recommendations to the board will be accompanied by formal petitions for rule making (RCW 34.05.330). The policy committee will use the CMER results to make specific ~~((petitions))~~ recommendations to the board ~~((for amending))~~ on:

(A) The regulatory scheme of forest practices management (Title 222 WAC rules and board manual);

(B) Voluntary, incentive-based, and training programs affecting forestry;

(C) The resource objectives; and

(D) CMER itself, adaptive management procedures, or other mechanisms implementing the recommendations contained in the most current forests and fish report.

(vii) **Board action to ~~((adopt))~~ accept petitions for ~~((amendment))~~ rule making and/or recommendations for guidance:** Upon receiving ~~((a formal petition))~~ recommendations from the policy committee for amendment to rules petitions and/or recommendations for guidance, the board will take appropriate and timely action. There will be a public review of all petitions as applicable. The board will make the final determination.

(e) **Biennial fiscal and performance audits.** The board shall require biennial fiscal and performance audits of the program by the department or other appropriate and accepting independent state agency.

(f) **CMER five-year peer review process.** Every five years the board will establish a peer review process to review all work of CMER and other available, relevant data, including recommendations from the CMER staff. There will be a specified, but limited, period for public review and comment.

(g) **Funding.** Funding is essential to implement the adaptive management program, which is dependent on quality and relevant data. The department shall request biennial budgets to support the program priority projects and basic

infrastructure needs including funding to staff the adaptive management program administrator position. A stable, long-term funding source is needed for these activities.

(h) **Formal dispute resolution process for CMER and policy committee.** If consensus cannot be reached through the adaptive management program process, participants will have their issues addressed by this dispute resolution process. Potential failures include, but are not limited to: The inability of policy to agree on research priorities, program direction, or recommendations to the board for uses of monitoring and/or research after receiving a report from CMER; the inability of CMER to produce a report and recommendation on schedule; and the failure of participants to act on policy recommendations on a specified schedule. Key attributes of the dispute resolution process are:

(i) Specific substantive and benchmark (schedule) triggers will be established by the board for each monitoring and research project for invoking dispute resolution;

(ii) The dispute resolution process is available to both CMER and the policy committee to resolve disputes that result in the course of their respective processes. Formal dispute resolution will be staged in three parts and may be applied at any level of the adaptive management process. Any ~~((participant))~~ participating policy committee caucus or board approved CMER member, or the board, may invoke each succeeding stage, if agreement is not reached by the previous stage, within the specified time (or if agreements are not substantially implemented) as follows:

(A) Stage one will be an attempt by CMER ~~((and))~~ or the policy committee, as applicable to reach consensus. ~~((On technical issues, CMER shall have))~~ Up to ~~((six))~~ two months to reach ~~((a))~~ consensus under stage one; unless otherwise agreed upon by CMER or the policy committee if substantive progress is being made. ~~((Parties))~~ Any party may move the process to stage two after an issue has been in dispute resolution before CMER or the policy committee for ~~((six))~~ two months ~~((unless otherwise agreed)).~~ The time periods commence from ~~((referral of technical issues to CMER, report by CMER to policy, or the raising of a nontechnical issue (or matter not otherwise referable to CMER) directly at policy))~~ the date the dispute resolution process is invoked.

(B) Stage two dispute resolution in CMER or the policy committee will be either ~~((informal))~~ mediation or ~~((formal))~~ arbitration. Within one month, one or the other will be picked, with the default being ~~((formal))~~ mediation unless otherwise agreed. Stage two will be completed within three months (including the one month to select the process) unless otherwise agreed based on substantive progress.

(C) If stage two dispute resolution within CMER does not result in consensus, the program administrator will forward the dispute to the policy committee for a decision, which could include initiation of the dispute resolution process in policy.

(D) If stage two dispute resolution within the policy committee does not result in consensus, stage three dispute resolution will be action by the board. The ~~((board will consider policy and CMER reports, and))~~ program administrator will report the majority and minority ~~((thinking regarding the results and uses of the results can be brought forward to the board))~~ recommendations to the board for all disputes failing

to reach resolution following stage two. The board will make the final determination regarding dispute resolution.

**WSR 13-11-133**  
**PROPOSED RULES**  
**FOREST PRACTICES BOARD**

[Filed May 22, 2013, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-112 and 13-06-013.

Title of Rule and Other Identifying Information: The forest practices board (board) is proposing Title 222 WAC amendments to:

- Carry out 2012 legislation ((2ESSB 6406), chapter 1, Laws of 2012).
- Implement recommendations of the forest practices biomass working group.

Hearing Location(s): Department of Natural Resources (DNR), 713 East Bowers, Ellensburg, (509) 925-8510, on June 25, 2013, at 6:00 p.m.; and at the Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, (360) 902-1400, on June 27, 2013, at 6:00 p.m.

Date of Intended Adoption: August 13, 2013.

Submit Written Comments to: Patricia Anderson, DNR, P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@dnr.wa.gov, fax (360) 902-1428, by June 28, 2013.

Assistance for Persons with Disabilities: Contact forest practices division at (360) 902-1400, TTY (360) 902-1125, by June 18, 2013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Forest practices hydraulic projects (FPHPs), these rules fulfill the directive in 2ESSB 6406 (2012) to incorporate into the forest practices rules (Title 222 WAC) the fish protection standards from the hydraulic code rules (chapter 220-110 WAC) that are applicable to activities regulated under the forest practices rules. The affected forest practices rules are in chapters 222-12, 222-16, 222-20, 222-24, 222-30, 222-34, and 222-50 WAC.

The anticipated effect is hydraulic project proposals associated with forest practices activities will be integrated into forest practices applications (FPAs) and not require a separate hydraulic project approval. The Washington department of fish and wildlife (WDFW) will provide concurrence review for certain FPAs that involve water crossing structures, including specific types of culvert, bridge, and fill projects. WDFW will also continue to review and comment on any FPA.

The board is considering two options for two of the definitions in WAC 222-16-010: "Bankfull width" and "forest practices hydraulic project."

"Bankfull width"

- Option 1. No change to the definition.
- Option 2. Add the definition of "ordinary high water line" from WAC 220-110-020(69) to the definition of "bankfull width" specifically for forest practices hydraulic project construction.

"Forest practices hydraulic project"

- Option 1. "Type S, F, or N Water" is included [in] the definition.
- Option 2. "Type S or F Water" (not Type N Water) is included in the definition.

Forest biomass, the forest practices biomass work group (August 2012) recommended the following rule changes to ensure understanding that forest biomass harvest is subject to the forest practices rules:

- Add a definition of "forest biomass" in WAC 222-16-010;
- Insert "... and removal through ..." into the definition of "forest practice" in WAC 222-16-010; and
- Insert "... including forest biomass removal operations ..." into the logging system portion of WAC 222-30-020 Harvest unit planning and design.

Reasons Supporting Proposal: Rules related to FPHPs will fulfill legislative direction; rules related to forest biomass will add regulatory clarity for stakeholders who harvest forest biomass or review FPAs involving forest biomass harvest.

Statutory Authority for Adoption: RCW 76.09.040.

Statute Being Implemented: 2ESSB 6406, chapter 1, Laws of 2012.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Marc Engel, 1111 Washington Street S.E., Olympia, (360) 902-1390; Implementation: Donelle Mahan, 1111 Washington Street S.E., Olympia, (360) 902-1405; and Enforcement: Mary McDonald, 1111 Washington Street S.E., Olympia, (360) 902-1398.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule proposal will not impose costs on businesses.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Gretchen Robinson, 1111 Washington Street S.E., Olympia, WA 98504-4012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov.

May 20, 2013

Aaron Everett

Chair

AMENDATORY SECTION (Amending WSR 11-12-009, filed 5/20/11, effective 6/20/11)

**WAC 222-12-010 Authority.** These forest practices rules are adopted pursuant to chapter 76.09 RCW, and RCW 76.13.100 through 76.13.130(~~and RCW 77.85.180 through 77.85.190~~). Where necessary to accomplish the purposes and policies stated in the act, the board is authorized to promulgate forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in the act. These rules establish minimum standards for forest practices, provide procedures for the voluntary development of resource management plans, set forth necessary administra-

tive provisions, establish procedures for the collection and administration of forest practices fees, allow for the development of watershed analyses, foster cooperative relationships and agreements with affected tribes, and establish the rivers and habitat open space program. The board also establishes which forest practices will be included within each class and is authorized to adopt rules under RCW 76.09.055, 76.09.-370, and 76.13.120(~~((9))~~)(10).

Promulgation of all forest practices rules shall be accomplished so that compliance with such forest practices rules will achieve compliance with the water quality laws.

Those rules marked with an asterisk (\*) pertain to water quality protection; pursuant to RCW 76.09.040 they can be amended only by agreement between the board and the department of ecology.

Forest practices rules shall be administered and enforced by the department except as otherwise provided in the act. Such rules shall be administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-12-030 Application information and classes of forest practices.** Forest practices are divided into four classes as specified by RCW 76.09.050 and described in WAC 222-16-050. Review periods and application and notification requirements differ as follows:

(1) **Class I forest practices** require no application or notification, but do require compliance with all other forest practices rules.

(2) **Class II forest practices** require a notification to the department, and may begin five calendar days (or such lesser time as the department may determine) after receipt of a complete notification by the department.

(3) **Class III forest practices** must be approved or disapproved within thirty or fewer calendar days of receipt of a complete application by the department. The department is directed to approve or disapprove within fourteen calendar days Class III applications not requiring additional field review. Exceptions are:

(a) Multiyear applications must be approved or disapproved within forty-five days of receipt of a complete application by the department.

(b) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.

(c) Applications including the project types listed in WAC 222-20-017 (4)(b), concurrence review, must be approved or disapproved within sixty days of receipt of a complete application by the department.

(4) **Class IV forest practices** are divided into "Class IV-special," and "Class IV-general," and must be approved or disapproved within thirty calendar days of receipt of a complete application by the department. Exceptions are:

(a) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.

(b) Applications including the project types listed in WAC 222-20-017 (4)(b), concurrence review, must be approved or disapproved within sixty days of receipt of a complete application by the department.

(c) If a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(5) In certain emergencies as defined in RCW 7.09.060 (7), the application or notification may be submitted within forty-eight hours after commencement of the practice.

#### NEW SECTION

**WAC 222-12-037 \*Applications that include forest practices hydraulic projects.** (1) The review process for applications that include forest practices hydraulic projects is described in WAC 222-20-017.

(2) Pursuant to RCW 76.09.040(3), fish protection standards within chapter 220-110 WAC, Hydraulic code rules, are incorporated into Title 222 WAC as they apply to forest practices hydraulic projects, and are summarized in WAC 222-16-025.

(3) Each forest practices hydraulic project included in an application will be reviewed on an individual basis and will be subject to rules and applicable conditions to the forest practices application or notification. Common general provisions applicable to a specific project may be modified or deleted by the department where any of the following is demonstrated by the landowner:

(a) The provision has no logical application to the project.

(b) The applicant provides an alternate plan to the provision and demonstrates that it provides equal or greater protection for fish life.

(c) The modification or deletion of the provision will not contribute to net loss of fish life.

(4) Projects may be subject to additional conditions to address project- or site-specific considerations not adequately addressed by the forest practices application or notification.

(5) The department will place specific time limitations on project activities in forest practices hydraulic projects in order to protect fish life. The department and the applicant will consult with the department of fish and wildlife for appropriate work windows for the protection of fish life.

(6) If site conditions change over the course of an approved application, the department may approve a landowner request for an amendment to the application.

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

**WAC 222-12-050 Notices to comply—Stop work orders.** (1) **Violations.** When a forest practice has been completed, the department may issue a notice to comply requiring the operator or landowner to correct or compensate for damage to public resources where there was:

(a) A violation of the act, or these rules; or  
 (b) A deviation from the approved application; or  
 (c) A willful or negligent disregard for potential damage to a public resource.

(2) **Other required action.** When a forest practice has not yet been completed, the department may issue either a notice to comply to the operator and/or landowner, or a stop



work order to the operator, requiring him/her to prevent potential or continuing damage to a public resource where:

(a) The need for additional actions or restrictions has become evident; and

(b) The department determines that a specific course of action is needed to prevent potential or continuing damage to public resources; and

(c) The damage would result or is resulting from the forest practices activities, whether or not the activities involve any violation, unauthorized deviation or negligence.

(3) **No notice to comply** shall be issued to require a person to prevent, correct, or compensate for any damage to public resources which occurs more than ((4)) one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules: Provided, That this provision shall not relieve the forest landowner from any obligation to comply with forest practices rules pertaining to providing continuing road maintenance.

(4) **No notice to comply** to recover money damages shall be issued more than ((2)) two years after the date the damage involved occurs.

(5) **In emergency action**, where the department requires the operator or landowner to do immediate work ((#)) that could affect the bed or flow of the stream, the department shall first seek ((approval)) consultation from the department of fish and wildlife.

AMENDATORY SECTION (Amending WSR 11-12-009, filed 5/20/11, effective 6/20/11)

**WAC 222-12-090 Forest practices board manual.**

When approved by the board the manual serves as an advisory technical supplement to these forest practices rules. The department, in cooperation with the departments of fish and wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

(1) **Method for determination of adequate shade requirements on streams** needed for use with WAC 222-30-040.

(2) Standards for identifying channel migration zones and bankfull channel features.

(3) **Guidelines** for forest roads.

(4) **Guidelines** for clearing slash and debris from Type Np and Ns Waters.

(5) **Guidelines** for ((~~landing location and construction~~)) forest practices hydraulic projects.

(6) **Guidelines** for determining acceptable stocking levels.

(7) **Guidelines** for riparian management zones.

(8) **Guidelines** for wetland delineation.

(9) **Guidelines** for wetland replacement or substitution.

(10) A list of nonnative wetland plant species.

(11) The standard methodology for conducting watershed analysis shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The methodology

shall also include a cultural resource module that shall specify the quantitative and qualitative methods, indices of resource conditions, and guidelines for developing voluntary management strategies for cultural resources. Except for cultural resources, the department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.

(12) **Guidelines** for forest chemicals.

(a) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).

(b) Guidelines for aerial applications of pesticides and other forest chemicals under chapter 222-38 WAC.

(13) **Guidelines** for determining fish use for the purpose of typing waters under WAC 222-16-031.

(14) **Survey protocol for marbled murrelets.** The Pacific Seabird Group survey protocol dated January 6, 2003, and formally titled *Methods for Surveying Marbled Murrelets in Forests: A Revised Protocol for Land Management and Research*, shall be used when surveying for marbled murrelets in a stand. Surveys are valid if they were conducted in compliance with the board-recognized Pacific Seabird Group survey protocols in effect at the beginning of the season in which the surveys were conducted.

(15) The department shall, in consultation with the department of fish and wildlife, develop **platform protocols** for use by applicants in estimating the number of platforms, and by the department in reviewing and classifying forest practices under WAC 222-16-050. These protocols shall include:

(a) A sampling method to determine platforms per acre in the field;

(b) A method to predict the number of platforms per acre based on information measurable from typical forest inventories. The method shall be derived from regression models or other accepted statistical methodology, and incorporate the best available data; and

(c) Other methods determined to be reliable by the department, in consultation with the department of fish and wildlife.

(16) **Guidelines** for evaluating potentially unstable slopes and landforms.

(17) **Guidelines** for the small forest landowner forestry riparian easement program.

(18) **Guidelines** for rivers and habitat open space program.

(19) **Guidelines** for hardwood conversion.

(20) **Guidelines** for financial assurances.

(21) **Guidelines** for alternate plans.

(22) **Guidelines** for adaptive management program.

(23) **Guidelines** for field protocol to locate mapped divisions between stream types and perennial stream identification.

(24) **Guidelines** for interim modification of bull trout habitat overlay.

(25) **Guidelines** for bull trout presence survey protocol.

(26) **Guidelines** for placement strategy for woody debris in streams.

AMENDATORY SECTION (Amending WSR 13-01-007, filed 12/6/12, effective 1/6/13)

**WAC 222-16-010 \*General definitions.** Unless otherwise required by context, as used in these rules:

"**Act**" means the Forest Practices Act, chapter 76.09 RCW.

"**Affected Indian tribe**" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"**Alluvial fan**" see "sensitive sites" definition.

"**Appeals board**" means the pollution control hearings board established in RCW 43.21B.010.

"**Aquatic resources**" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"**Area of resource sensitivity**" means areas identified in accordance with WAC 222-22-050 (2)(d), 222-22-060(2), or 222-22-090.

"**Bankfull depth**" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

#### **Option 1**

"**Bankfull width**" means:

(a) For streams - The measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - Line of mean high water.

(c) For tidal water - Line of mean high tide.

(d) For periodically inundated areas of associated wetlands - Line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

#### **Option 2**

"Bankfull width" (a) For establishing riparian management zones, bankfull width means:

(i) For streams - The measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(ii) For lakes, ponds, and impoundments - Line of mean high water.

(iii) For tidal water - Line of mean high tide.

(iv) For periodically inundated areas of associated wetlands - Line of periodic inundation, which to ascertain where

the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

(b) For conducting forest practices hydraulic projects, bankfull width means the ordinary high water line, as that term is defined in WAC 220-110-020(69): "... the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland, provided that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood."

"**Basal area**" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"**Bedrock hollows**" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

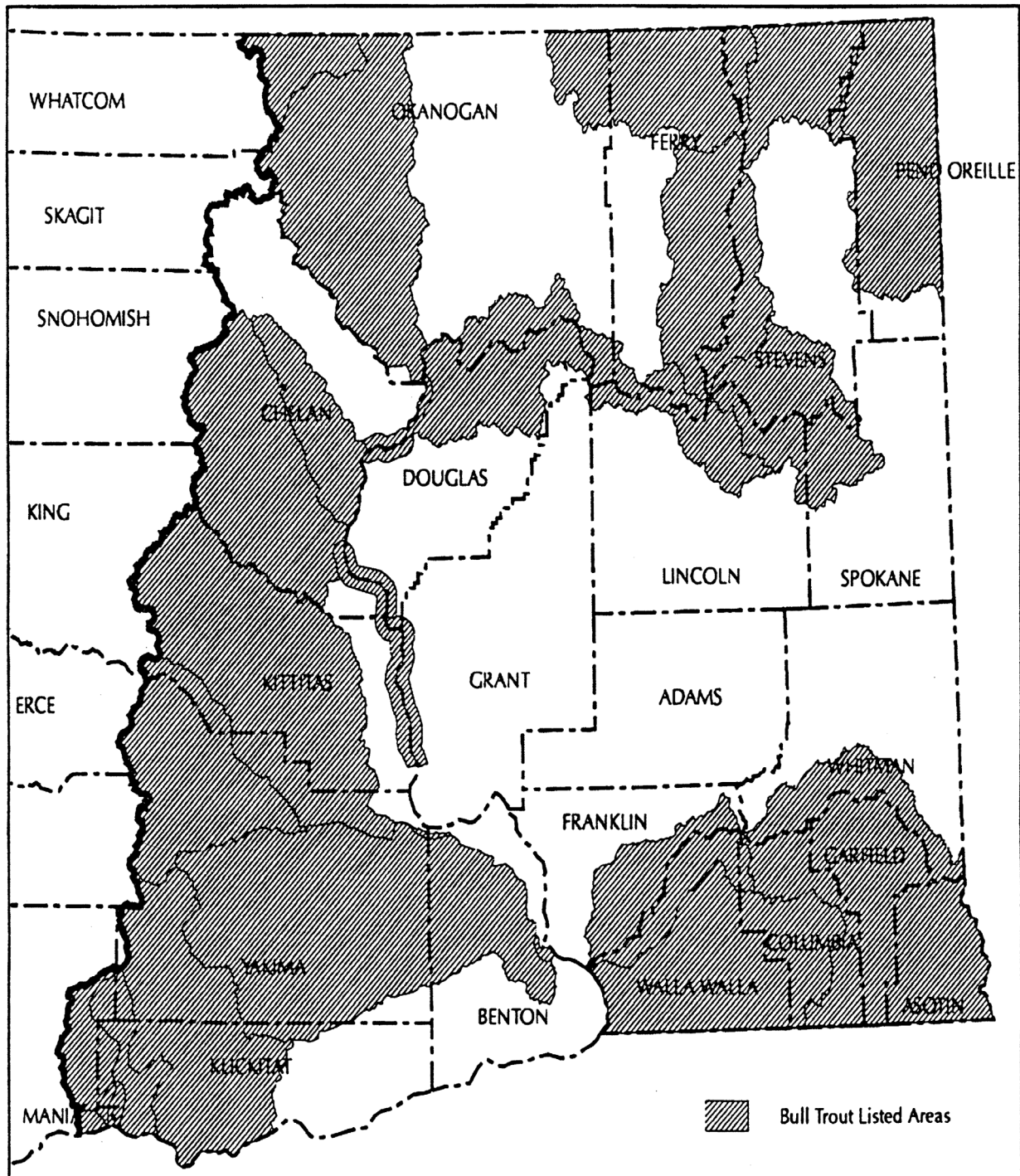
"**Board**" means the forest practices board established by the act.

"**Bog**" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"**Borrow pit**" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"**Bull trout habitat overlay**" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Columbia River Gorge National Scenic Area or CRGNSA"** means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

**"CRGNSA special management area"** means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

**"CRGNSA special management area guidelines"** means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

**"Commercial tree species"** means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

**"Completion of harvest"** means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

**"Constructed wetlands"** means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

**"Contamination"** means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

**"Convergent headwalls"** (or headwalls) means tear-drop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

**"Conversion activities"** means activities associated with conversions of forest land to land uses other than commercial timber operation. These activities may be occurring during or after timber harvest on forest land. They may include but are not limited to the following:

- Preparation for, or installation of, utilities on the forest practices activity site. The development or maintenance of existing rights of way providing utilities exclusively for other ownerships shall not be considered conversions of forest land (see WAC 222-20-010(5)).

- Any of, or any combination of, the following activities in preparation for nonforestry use of the land: Grading, filling, or stump removal.

- Preparation for, or construction of, any structure requiring local government approval.

- Construction of, or improvement of, roads to a standard greater than needed to conduct forest practices activities.

- Clearing for, or expansion of, rock pits for nonforest practices uses or developing surface mines.

**"Conversion option harvest plan"** means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

**"Conversion to a use other than commercial timber operation"** means a bona fide conversion to an active use which is incompatible with timber growing.

**"Cooperative habitat enhancement agreement (CHEA)"** see WAC 222-16-105.

**"Critical habitat (federal)"** means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

**"Critical habitat (state)"** means those habitats designated by the board in accordance with WAC 222-16-080.

**"Critical nesting season"** means for marbled murrelets - April 1 to August 31.

**"Cultural resources"** means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

**"Cumulative effects"** means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

**"Daily peak activity"** means for marbled murrelets - One hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

**"Date of receipt,"** as that term is defined in RCW 43.21B.001, means:

- (a) Five business days after the date of mailing; or

- (b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

**"Debris"** means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities

which would reasonably be expected to cause significant damage to a public resource.

**"Deep-seated landslides"** means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

**"Demographic support"** means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

**"Department"** means the department of natural resources.

**"Desired future condition (DFC)"** is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

**"Diameter at breast height (dbh)"** means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

**"Dispersal habitat"** see WAC 222-16-085(2).

**"Dispersal support"** means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

**"Drainage structure"** means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

**"Eastern Washington"** means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



**"Eastern Washington timber habitat types"** means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet

**Timber Habitat Types**  
high elevation

**Elevation Ranges**  
above 5000 feet

**"Edge"** of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

**"End hauling"** means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

**"Equipment limitation zone"** means a 30-foot wide zone measured horizontally from the outer edge of the bank-full width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

**"Erodible soils"** means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

**"Even-aged harvest methods"** means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Fen"** means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

**"Fertilizers"** means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

**"Fill"** means the placement of earth material or aggregate for road or landing construction or other similar activities.

**"Fish"** means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

**"Fish habitat"** means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

**"Fish passage barrier"** means any artificial in-stream structure that impedes the free passage of fish.

**"Fish protection standards"** means the standards by which forest practices hydraulic projects are evaluated. These standards are identified in WAC 222-16-025.

**"Flood level - 100 year"** means a calculated flood event flow based on an engineering computation of flood magnitude that has a ((+)) one percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

**"Forest biomass"** means material from trees, and woody plants that are by-products of forest management, ecosystem restoration, or hazardous fuel reduction treatments on forest land. Although stumps are a by-product of these activities, only those removed for the purpose of road and landing construction, forest health treatments, or conversion activities may qualify as forest biomass.

**"Forest land"** means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

**"Forest landowner"** means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

**"Forest practice"** means any activity conducted on or directly pertaining to forest land and relating to growing, and removal through harvesting, or processing timber or forest biomass, including but not limited to:

Activities in and over typed water:

Road and trail construction;

Harvesting, final and intermediate;  
 Precommercial thinning;  
 Reforestation;  
 Fertilization;  
 Prevention and suppression of diseases and insects;  
 Salvage of trees; and  
 Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

#### **Option 1**

**"Forest practices hydraulic project"** means a forest practices activity that includes the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any Type S and F, or N Water.

#### **Option 2**

**"Forest practices hydraulic project"** means a forest practices activity that includes the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any Type S or F Water.

**"Forest road"** means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

**"Forest trees"** does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

**"Full bench road"** means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

**"Green recruitment trees"** means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(((44))) (12).

**"Ground water recharge areas for glacial deep-seated slides"** means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

**"Headwater spring"** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

**"Herbicide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

**"Horizontal distance"** means the distance between two points measured at a zero percent slope.

**"Hyporheic"** means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

**"Identified watershed processes"** means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

- Mass wasting;
- Surface and road erosion;
- Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
- Large organic debris;
- Shading; and
- Stream bank and bed stability.

**"Inner gorges"** means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

**"Insecticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

**"Interdisciplinary team"** (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

**"Islands"** means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

**"Large forest landowner"** is a forest landowner who is not a small forest landowner.

**"Limits of construction"** means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

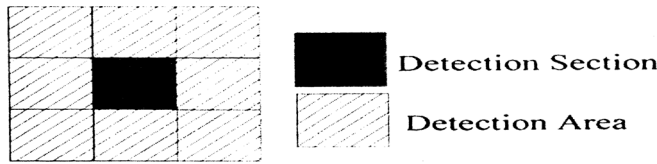
**"Load bearing portion"** means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

**"Local governmental entity"** means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

**"Low impact harvest"** means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

**"Marbled murrelet detection area"** means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be com-

prised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



**"Marbled murrelet nesting platform"** means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

**"Median home range circle"** means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

**"Merchantable stand of timber"** means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

**"Multiyear permit"** means a permit to conduct forest practices which is effective for longer than three years but no longer than five years.

**"Northern spotted owl site center"** means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

- Status 1: Pair or reproductive - A male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.
- Status 2: Two birds, pair status unknown - The presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.
- Status 3: Resident territorial single - The presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines

or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Notice of a conversion to a nonforestry use"** means a notice issued by the department pursuant to RCW 76.09.060 (3)(b). A landowner who receives such notice is subject to the actions and requirements described in RCW 76.09.460 and 76.09.470.

**"Notice to comply"** means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

**"Occupied marbled murrelet site"** means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

- (a) A nest is located; or
- (b) Downy chicks or eggs or egg shells are found; or
- (c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- (d) Birds calling from a stationary location within the area; or
- (e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

- (a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or
- (b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

- (a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or
- (b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or



(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Old forest habitat"** see WAC 222-16-085 (1)(a).

**"Operator"** means any person engaging in forest practices except an employee with wages as his/her sole compensation.

**"Ordinary high-water mark"** means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

**"Other forest chemicals"** means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

**"Park"** means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

**"Partial cutting"** means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

**"Pesticide"** means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

**"Plantable area"** is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and

any other area devoted to a use incompatible with commercial timber growing.

**"Power equipment"** means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

**"Preferred tree species"** means the following species listed in descending order of priority for each timber habitat type:

<b>Ponderosa pine habitat type</b>	<b>Mixed conifer habitat type</b>
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

**"Public resources"** means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

**"Qualified surveyor"** means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

**"Rehabilitation"** means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

**"Resource characteristics"** means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

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

**"Riparian management zone (RMZ)"** means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bank-full width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

**(2) For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100*
IV	75' or 100*
V	75' or 100*

\* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

**"RMZ core zone"** means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

**"RMZ inner zone"** means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

**"RMZ outer zone"** means the area measured horizontally between the outer boundary of the inner zone and the

RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

**"Road construction"** means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

**"Road maintenance"** means either of the following:

- (a) All road work located within an existing forest road prism;
- (b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:
  - Maintaining, replacing, and installing drainage structures;
  - Controlling road-side vegetation;
  - Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

**"Rodenticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

**"Salvage"** means the removal of snags, down logs, windthrow, or dead and dying material.

**"Scarification"** means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

**"Sensitive sites"** are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"**Shorelines of the state**" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"**Side casting**" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"**Site class**" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"**Site preparation**" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"**Skid trail**" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"**Slash**" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"**Small forest landowner**" means an owner of forest land who, at the time of submission of required documentation to the department:

- Has harvested no more than an average timber volume of two million board feet per year from their own forest lands in Washington state during the three years prior to submitting required documentation; and
- Certifies they do not expect to exceed that average timber volume for ten years after the department receives the required documentation.

However, a landowner who exceeded or expects to exceed those harvest limits may still be deemed a small forest landowner under circumstances described in RCW 76.09.450.

"**Small forest landowner long-term application**" means a proposal from a small forest landowner to conduct forest practices activities for terms of four to fifteen years. Small forest landowners are eligible to submit long-term applications if they meet the definition of "small forest landowner."

"**SOSEA goals**" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"**Spoil**" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"**Spotted owl conservation advisory group**" means a three-person advisory group designated by the board as follows: One person shall be a representative of Washington's forest products industry, one person shall be a representative of a Washington-based conservation organization actively involved with spotted owl conservation, and one person shall be a representative of the department's forest practices program. Members of the group shall have a detailed working knowledge of spotted owl habitat relationships and factors affecting northern spotted owl conservation. On an annual basis, beginning November 2010, the board will determine whether this group's function continues to be needed for spotted owl conservation.

"**Spotted owl dispersal habitat**" see WAC 222-16-085 (2).

"**Spotted owl special emphasis areas (SOSEA)**" means the geographic areas as mapped in WAC 222-16-086.

Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

**"Stop work order"** means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

**"Stream-adjacent parallel roads"** means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

**"Sub-mature habitat"** see WAC 222-16-085 (1)(b).

**"Suitable marbled murrelet habitat"** means a contiguous forested area containing trees capable of providing nesting opportunities:

((+)) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

- (a) Within 50 miles of marine waters;
- (b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;
- (c) Two or more nesting platforms per acre;
- (d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

**"Suitable spotted owl habitat"** see WAC 222-16-085(1).

**"Temporary road"** means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

**"Threaten public safety"** means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

**"Threatened or endangered species"** means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

**"Timber"** means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

**"Unconfined stream"** see WAC 222-23-010(2).

**"Validation,"** as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

**"Water bar"** means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

**"Watershed administrative unit (WAU)"** means an area shown on the map specified in WAC 222-22-020(1).

**"Watershed analysis"** means, for a given WAU, the resource assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-080 and shall include resource assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity and the ongoing reviews and reanalyses completed under WAC 222-22-090.

**"Weed"** is any plant which tends to overgrow or choke out more desirable vegetation.

**"Western Washington"** means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

**"Wetland"** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

**"Wetland functions"** include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

**"Wetland management zone"** means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

**"Wildlife"** means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

**"Wildlife reserve trees"** means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only

green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

**"Windthrow"** means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

**"Yarding corridor"** means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

**"Young forest marginal habitat"** see WAC 222-16-085 (1)(b).

#### NEW SECTION

**WAC 222-16-025 Fish protection standards for forest practices hydraulic projects.** (1) Specific fish protection standards in chapter 220-110 WAC, Hydraulic code rules, are included in forest practices rules pertaining to forest practices hydraulic project types. The most common hydraulic project types in forest practices are included in chapters 222-24 and 222-30 WAC. Fish protection standards for hydraulic projects that are less commonly associated with forest practices can be found in chapter 220-110 WAC, Hydraulic code rules. These may include, but are not limited to, channel change and realignment, dredging in fresh water areas, and outfall structures.

(2) The department will evaluate forest practices hydraulic projects on the basis of whether they meet fish protection standards. The primary objectives of the fish protection standards are to:

- (a) Protect fish life;
- (b) Achieve no-net-loss of productive capacity of fish or shellfish habitat;
- (c) Minimize project-specific and cumulative impacts to fish life; and
- (d) Mitigate for unavoidable impacts to fish life and fish habitat.

(3) "Fish life," "protection of fish life," "mitigation," and "no-net-loss" are defined in WAC 220-110-020 as follows:

(a) "Fish life" means all fish species including, but not limited to, food fish, shellfish, game fish, and other nonclassified fish species and all stages of development of those species.

(b) "Protection of fish life" means prevention of loss or injury to fish or shellfish, and protection of the habitat that supports fish and shellfish populations.

(c) "Mitigation" means actions required as provisions of forest practices hydraulic projects to avoid or compensate for impacts to fish life resulting from the proposed project activity. The type(s) of mitigation required will be considered and implemented, where feasible, in the following sequential order of preference:

(i) Avoiding the impact altogether by not taking a certain action or parts of an action;

(ii) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(iii) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(iv) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or

(v) Compensating for the impact by replacing or providing substitute resources or environments; or

(vi) Monitoring the impact and taking appropriate corrective measures to achieve the identified goal.

For projects with potentially significant impacts, a mitigation agreement may be required prior to approval. Replacement mitigation may be required to be established and functional prior to project construction.

(d) No-net-loss means:

(i) Avoidance or mitigation of adverse impacts to fish life; or

(ii) Avoidance or mitigation of net loss of habitat functions necessary to sustain fish life; or

(iii) Avoidance or mitigation of loss of area by habitat type.

Mitigation to achieve no-net-loss should benefit those organisms being impacted.

(4) The following general conditions shall apply to any forest practices hydraulic project, as defined in WAC 222-16-010:

(a) If fish may be adversely impacted as a result of the project, the landowner may be required to capture and safely move food fish, game fish, or other fish life (at the discretion of the department in consultation with the department of fish and wildlife) to the nearest free-flowing water. See board manual section 5 for further guidance.

(b) If at any time fish are observed in distress, a fish kill occurs or water quality problems develop as a result of the project, operations shall cease immediately and the department shall be immediately contacted.

(c) Disturbance to the stream bed, banks and riparian vegetation shall be restricted to that necessary to complete the project.

(d) All disturbed areas shall be protected from erosion. The banks shall be revegetated with native or other approved woody species and maintained as necessary to ensure survival. See board manual section 5 for technical guidance. Equipment shall not enter or operate within the wetted perimeter of a stream.

(e) Equipment shall be inspected, cleaned and maintained to prevent loss of petroleum products waterward of

bankfull width. See board manual section 5 for further guidance.

(f) Excavation for and replacement of footings and foundations shall be landward of bankfull width unless the construction site is separated from typed waters by use of a dike, cofferdam, or other structure.

(g) Structures containing concrete shall be sufficiently cured prior to contact with water.

(h) Wastewater from project activities and water removed from the work area shall be routed to an area landward of the bankfull width to allow removal of fine sediment and other contaminants prior to being discharged to typed waters.

(i) Excess spoils shall be deposited onto the forest floor and not carry surface water or sediment into the stream channel or wetland.

(j) Wood or other materials treated with preservatives shall be sufficiently cured to minimize leaching into the water or bed. The use of creosote or pentachlorophenol is not allowed.

AMENDATORY SECTION (Amending WSR 13-01-007, filed 12/6/12, effective 1/6/13)

**WAC 222-16-050 \*Classes of forest practices.** There are four classes of forest practices created by the act. All forest practices (including those in Classes I and II) on nonfederal forest lands must be conducted in accordance with the forest practices rules. The department determines the classification of each forest practices proposal.

(1) **"Class IV-special."** Except as provided in WAC 222-16-051, application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be approved.

\*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as critical habitat (state) of threatened or endangered species.

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than five thousand board feet within any developed park recreation area and park managed salvage of merchantable forest products.

\*(d) Timber harvest, or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas, on potentially unstable slopes or landforms described in (d)(i) of this subsection that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety, and which has been field verified by the department (see WAC 222-10-030 SEPA policies for potentially unstable slopes and landforms).

(i) For the purpose of this rule, potentially unstable slopes or landforms are one of the following: (See board manual section 16 for more descriptive definitions.)

(A) Inner gorges, convergent headwalls, or bedrock hollows with slopes steeper than thirty-five degrees (seventy percent);

(B) Toes of deep-seated landslides, with slopes steeper than thirty-three degrees (sixty-five percent);

(C) Groundwater recharge areas for glacial deep-seated landslides;

(D) Outer edges of meander bends along valley walls or high terraces of an unconfined meandering stream; or

(E) Any areas containing features indicating the presence of potential slope instability which cumulatively indicate the presence of unstable slopes.

(ii) The department will base its classification of the application or notification on professional knowledge of the area, information such as soils, geologic or hazard zonation maps and reports, review of approved watershed analysis mass wasting prescriptions according to WAC 222-22-090(6) or other information provided by the applicant.

(iii) An application would not be classified as Class IV-special for potentially unstable slopes or landforms under this subsection if:

(A) The proposed forest practice is located within a watershed administrative unit (WAU) that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with approved prescriptions from the watershed analysis; and

(C) The applicable prescriptions are specific to the site or situation, as opposed to a prescription that calls for additional analysis. The need for an expert to determine whether the site contains specific landforms will not be considered "additional analysis," as long as specific prescriptions are established for such landforms.

\*(e) Timber harvest, in a WAU not subject to an approved watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation and local government, as high avalanche hazard where there is the potential to deliver sediment or debris to a public resource, or the potential to threaten public safety.

(f) Timber harvest or construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on the following except in (f)(iv) of this subsection:

(i) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030; or

(ii) Historic sites eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation; or

(iii) Sites containing evidence of Native American cairns, graves, or glyptic records as provided for in chapters 27.44 and 27.53 RCW. The department of archaeology and historic preservation shall consult with affected Indian tribes in identifying such sites.

(iv) A forest practice would not be classified as Class IV-special under this subsection if:

(A) Cultural resources management strategies from an approved watershed analysis conducted under chapter 222-22 WAC are part of the proposed forest practices, and the landowner states this in the application; or

(B) A management plan agreed to by the landowner, the affected Indian tribe, and the department of archaeology and historic preservation is part of the proposed application, and the landowner states this in the application.

\*(g) Forest practices subject to an approved watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan).

\*(h) Filling or draining of more than 0.5 acre of a wetland.

(2) "**Class IV-general.**" Applications involving the following circumstances are Class IV-general forest practices unless they are listed in Class IV-special. Forest practices applications classified Class IV-general are subject to the SEPA review process described in subsection (1) of this section.

(a) Forest practices (other than those in Class I) on lands that are being converted to another use;

(b) Forest practices that would otherwise be Class III, but are taking place on lands that are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-34-050); or

(c) Where the regulatory authority for forest practices has not been transferred from the department to the local governmental entity pursuant to RCW 76.09.240(1), forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except where the forest landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial timber operations for ten years. This statement must be accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

Upon receipt of an application, the department will determine the lead agency for purposes of compliance with SEPA pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a thirty-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a permit from a local governmental entity acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable local governmental entity under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the local governmental entity is the lead agency for purposes of compliance with the SEPA.

(3) "**Class I.**" Operations that have been determined to have no direct potential for damaging a public resource are

Class I forest practices. When the conditions listed in Class IV-special are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

\*(b) Road maintenance except: Replacement of bridges and culverts across Type S, F or flowing Type Np Waters; or movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

\*(c) Construction of landings less than one acre in size, if not within a shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\*(d) Construction of less than six hundred feet of road on a sideslope of forty percent or less if the limits of construction are not within the shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\*(e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type S Water and does not involve disturbance of the beds or banks of any waters.

\*(f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring ~~((a hydraulic permit))~~ an application.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than five thousand board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any twelve-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

\*(n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding forty percent or off-road use of tractors within the shorelines of a Type S Water, the riparian management zone of any Type F Water, or the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\*(o) Ground application of chemicals, if not within the CRGNSA special management area. See WAC 222-38-020 and 222-38-030.

\*(p) Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than forty contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within one hundred feet of lands used for farming, or within two hundred feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

\* (r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type S Water or the riparian management zone of a Type F Water, the bankfull width of a Type Np Water or flowing Type Ns Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

~~((s) Removal of beaver structures from culverts on forest roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.))~~

(4) **"Class II."** Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: Provided, that no forest practice enumerated below may be conducted as a Class II forest practice if the operation ~~((requires))~~ includes a forest practices hydraulic project ((approval (RCW 77.55.021))) or is within a "shorelines of the state," or involves owner of perpetual timber rights subject to RCW 76.09.067 (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a Class II forest practice if it takes place on lands that are being converted to another use. Unless the conditions described in (f) or (g) of this subsection are met, no forest practice enumerated below involving timber harvest or road construction may be conducted as a Class II if it takes place within urban growth areas designated pursuant to chapter 36.70A RCW. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practices application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application;

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal; and

(iv) The application is not a multiyear permit that is located within an area subject to reanalysis of a watershed analysis under WAC 222-22-090(6).

\* (c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than one acre.

\* (d) Salvage of logging residue if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent.

\* (e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of forty percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of five thousand board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than forty percent of the total timber volume is removed in any twelve-month period.

(iv) Any harvest on less than forty acres.

(v) Construction of six hundred or more feet of road, provided that the department shall be notified at least two business days before commencement of the construction.

\* (f) Forest practices involving timber harvesting or road construction listed in (a) through (e) of this subsection within urban growth areas (UGAs) designated pursuant to chapter 36.70A RCW, if the landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial timber operations for ten years. This statement must be accompanied by either a written forest management plan acceptable to the department, or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

\* (g) Forest practices listed in (a) through (e) of this subsection within UGAs, and where the regulatory authority for forest practices has been transferred to the local governmental entity pursuant to RCW 76.09.240(1), may nonetheless be Class II forest practices and regulated by the department if:

(i) The forest practice is on a landowner's ownership of contiguous forest land equal to or greater than twenty acres; and

(ii) The landowner provides documentation described in (f)(i) or (ii) of this subsection.

(5) **"Class III."** Forest practices not listed under Classes IV, I or II above are Class III forest practices. Among Class III forest practices are the following:

(a) Those ~~((requiring))~~ including forest practices hydraulic projects ((approval (RCW 77.55.021))).



\*(b) Those within the shorelines of the state other than those in a Class I forest practice.

\*(c) Aerial application of insecticides, except where classified as a Class IV forest practice.

\*(d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

\*(e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

\*(f) All road construction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over one acre.

\*(h) Road maintenance involving:

(i) Replacement of bridges or culverts across Type S, F or flowing Type Np Waters; or

(ii) Movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

(i) Operations involving owner of perpetual timber rights subject to RCW 76.09.067.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding nineteen acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

\*(n) Any filling of wetlands, except where classified as Class IV forest practices.

\*(o) Multiyear permits.

\*(p) Small forest landowner long-term applications that are not classified Class IV-special or Class IV-general, or renewals of previously approved Class III or IV long-term applications.

\*(q) Forest practices involving timber harvest or road construction listed in (a) through (p) of this subsection within urban growth areas (UGAs) designated pursuant to chapter 36.70A RCW, if the landowner provides documentation described in subsection (4)(f)(i) or (ii) of this section.

\*(r) Forest practices listed in (a) through (p) of this subsection within UGAs, and where the regulatory authority for forest practices has been transferred to the local governmental entity pursuant to RCW 76.09.240(1), may nonetheless be Class III forest practices and regulated by the department if:

(i) The forest practice is on a landowner's ownership of contiguous forest land equal to or greater than twenty acres; and

(ii) The landowner provides documentation described in subsection (4)(f)(i) or (ii) of this section.

\*(s) Removal of beaver structures from culverts on forest roads.

## NEW SECTION

### **WAC 222-20-017 \*Applications and notifications that include forest practices hydraulic projects. (1) Review for consistency with fish protection standards.**

The department reviews forest practices applications that include forest practices hydraulic projects for consistency with fish protection standards.

#### **(2) Preapplication consultation.**

(a) Prospective applicants are encouraged to consult with the department and the department of fish and wildlife, including site visits as needed, prior to submitting a forest practices application to the department.

(b) Preapplication consultation helps to ensure that project design and specifications meet fish protection standards.

(c) Preapplication consultation should take place well before submitting an application to the department and well before the desired work windows.

(3) **Application time limits.** Except for applications involving project types listed in subsection (5)(b) of this section, application time limits for applications that include forest practices hydraulic projects are the same as those listed in WAC 222-20-020.

(4) **Review of forest practices hydraulic projects involving Type S and F Waters by the department of fish and wildlife.** The department of fish and wildlife's review of forest practices hydraulic projects is guided by WAC 220-110-085, and summarized in (a) and (b) of this subsection:

(a) Except for the particular review process for projects listed in (b)(i) of this subsection, the department of fish and wildlife reviews forest practices hydraulic projects involving Type S and F Waters as follows:

(i) The department of fish and wildlife either provides comments to the department or documents that the review has occurred without the need for comments.

(ii) Prior to commenting, or as soon as reasonably practical, the department of fish and wildlife will communicate with the applicant regarding any concerns relating to consistency with fish protection standards.

(iii) The department of fish and wildlife will also strive to maintain communications with the department as concerns arise, and inform the department of its communications with applicants.

#### **(b) Concurrence review.**

(i) The following project types involving Type S and F Waters are subject to the department of fish and wildlife conducting a concurrence review according to the process outlined in WAC 220-110-085(3):

- Culvert installation or replacement, and repair at or below the bankfull width in Type S and F Waters that exceed five percent gradient;

- Bridge construction or replacement, and repair at or below the bankfull width of unconfined streams in Type S and F Waters; or

- Fill within the flood level-100 year of unconfined streams in Type S and F Waters.

(ii) After review of these projects, the department of fish and wildlife must provide written notification of concurrence or nonconcurrence to the department within thirty days of the department officially receiving a complete application, stating whether or not the project is consistent with fish protec-

tion standards and including any proposed changes needed to meet fish protection standards.

(iii) As indicated in WAC 222-20-020 (1)(e), the department approves, conditions, or disapproves such applications within sixty days of officially receiving an application. The department of fish and wildlife's review is completed within the first thirty days.

**(5) Disapproval.**

(a) An application will be disapproved if the department determines, after consultation with the department of fish and wildlife, that a forest practices hydraulic project in the application will result in direct or indirect harm to fish life, unless:

(i) Adequate mitigation can be assured by conditioning the application for the project; or

(ii) The project is modified satisfactorily.

(b) If disapproved, the department will provide a statement to the applicant in writing of the specific reason(s) why, and how the proposed project would adversely affect fish life.

**AMENDATORY SECTION** (Amending WSR 13-01-007, filed 12/6/12, effective 1/6/13)

**WAC 222-20-020 Application time limits.** (1) **When the department officially receives an application**, the department will approve, condition or disapprove it within thirty calendar days for Class III and Class IV forest practices, except:

(a) To the extent the department is prohibited from approving the application by the act.

(b) For Class IV applications when the department or the lead agency has determined that a detailed environmental statement must be made, the application must be approved, conditioned or disapproved within sixty days, unless the commissioner of public lands promulgates a formal order specifying a later date for completion of the detailed environmental statement and final action on the application. At least ten days before promulgation of such an order extending the time, the applicant shall be given written notice that the department is requesting such extension; giving the reasons the process cannot be completed within such period; and stating that the applicant may comment in writing to the commissioner of public lands or obtain an informal conference with the department regarding the proposed extension.

(c) When they involve lands described in (c)(i), (ii) or (iii) of this subsection, the applicable time limit shall be no less than fourteen business days from transmittal to the local governmental entity unless the local governmental entity has waived its right to object or has consented to approval of the application:

(i) Lands that are being converted to another use;

(ii) Lands that will not be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-20-050); or

(iii) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW.

(d) Applications for multiyear permits will be approved, conditioned, or disapproved within forty-five days of the department receiving a complete application, except if a detailed environmental statement is necessary, additional

time for approval or disapproval as specified in RCW 76.09.050 will be required.

(e) Applications requiring a concurrence review of forest practices hydraulic projects listed in WAC 222-20-017 (4)(b) will be approved, conditioned, or disapproved within sixty days of the department officially receiving an application. The department of fish and wildlife's review will take place within the first thirty days.

(f) Small forest landowner long-term applications will be reviewed in two steps as described in WAC 222-20-016. The department will review Step 1 and issue a decision within forty-five days of receiving a complete resource and roads assessment. The department will review and approve, condition, or disapprove Step 2 within forty-five days of receiving a complete resource protection strategies portion of the long-term application, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(2) **Where a notification** is submitted for operations which the department determines involve Class III or IV forest practices, the department shall issue a stop work order or take other appropriate action. If the operations were otherwise in compliance with the act and forest practices rules, no penalty should be imposed for those operations which occurred prior to the enforcement action: Provided that no damage to a public resource resulted from such operations, and the operations commenced more than five days from receipt by the department of the notification.

(3) **If the department** fails to approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may commence except that this provision shall not apply where:

(a) The local governmental entity objects and the application involves lands that are being converted to a use other than commercial timber operations where the local governmental entity's right of objection is fourteen business days which may be longer than the approval time limit.

(b) The department is prohibited from approving the application by the act.

(c) Compliance with the State Environmental Policy Act requires additional time.

(4) **If seasonal field** conditions prevent the department from being able to properly evaluate the application, the department may disapprove the application until field conditions allow for an on-site review.

**AMENDATORY SECTION** (Amending WSR 13-01-007, filed 12/6/12, effective 1/6/13)

**WAC 222-20-040 Approval conditions.** (1) **Whenever an approved application includes a forest practices hydraulic project or authorizes a forest practices activity** which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when ~~((requested))~~ required as a condition on the approved application, notify the department two business days before the commencement of actual operations.

(2) **All approvals are** subject to any conditions stipulated on the approved application and to any subsequent additional requirements set forth in a stop work order or a notice to comply.

**(3) Local governmental entity conditions—Class IV-general applications.**

(a) RCW 76.09.240(6) allows a local governmental entity to exercise limited land use planning or zoning authority on certain types of forest practices. This subsection is designed to ensure that local governmental entities exercise this authority consistent with chapter 76.09 RCW and the rules in Title 222 WAC. The system provided for in this subsection is optional.

(b) This subsection only applies to applications on lands that are being converted to a use other than commercial timber operations.

(c) After determining that an application is Class IV-general, the department shall transmit the applications to the appropriate local governmental entity within two business days from the date the department officially receives the application.

(d) The department shall condition the application consistent with the request of the local governmental entity if:

(i) The local governmental entity has adopted a clearing and/or grading ordinance that addresses the items listed in (e) of this subsection and requires a permit;

(ii) The local governmental entity has issued a permit under the ordinance in (i) that contains the requested conditions; and

(iii) The local governmental entity has entered into an interagency agreement with the department consistent with WAC 222-50-030 addressing enforcement of forest practices.

(e) The local governmental entity conditions may only cover:

(i) The location and character of open space and/or vegetative buffers;

(ii) The location and design of roads;

(iii) The retention of trees for bank stabilization, erosion prevention, and/or storm water management; or

(iv) The protection of critical areas designated pursuant to chapter 36.70A RCW.

(f) The local governmental entity shall file its conditions with the department within twenty-nine days of the department's official receipt of the application or within fourteen business days of the transmittal of the application to the local governmental entity or one day before the department acts on the application, whichever is later.

(g) The department shall incorporate local governmental entity conditions consistent with this subsection as conditions of the forest practices approval.

(h) Any exercise of local governmental entity authority consistent with this subsection shall be considered consistent with the forest practices rules in this chapter.

**(4) Lead agency mitigation measures.**

(a) This subsection is designed to specify procedures for a mitigated DNS process that are consistent with chapters 76.09 and 43.21C RCW and the rules in Title 222 WAC and chapter 197-11 WAC.

(b) This subsection applies to all Class IV applications in which the department is not the lead agency under the State Environmental Policy Act. (See WAC 197-11-758.)

(c) The department shall transmit the application to the lead agency within two business days from the date the department officially receives the application.

(d) The lead agency may specify mitigation measures pursuant to WAC 197-11-350.

(e) The lead agency threshold determination and any mitigation measures must be filed with the department within the later of twenty-nine days of the official receipt of the application by the department, fourteen business days of the transmittal of the application to the lead agency if the lead agency is a local governmental entity; or one day before the department acts on the application.

(f) Unless the applicant clarifies or changes the application to include mitigation measures specified by the lead agency, the department must disapprove the application or require an environmental impact statement. (See WAC 197-11-738.)

(g) If the department does not receive a threshold determination from the lead agency by the time it must act on the application, the department shall disapprove the application.

**(5) Small forest landowner approval conditions.** The department shall not disapprove a small forest landowner's application or notification on the basis that fish passage barriers have not been removed or replaced if the landowner has committed to participate in the department's family forest fish passage program for:

(a) Any barriers on their forest roads located within the boundaries of their application or notification; and

(b) Any barriers on their forest roads needed for their proposed forest practice, but located outside the boundaries of the application or notification.

**(6) CRGNSA special management area.**

(a) **Policy.** The states of Oregon and Washington have entered into a Compact preauthorized by Congress to implement the CRGNSA Act, 16 U.S.C. §§ 544, et seq. chapter 43.97 RCW, 16 U.S.C. § 544c. The purposes of the CRGNSA Act are:

(i) To establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and

(ii) To protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1). 16 U.S.C. § 544a.

The forest practices rules addressing forest practices in the CRGNSA special management area recognize the intent of Congress and the states expressed in the CRGNSA Act and Compact and the intent of the Washington state legislature in the Forest Practices Act. These rules are designed to recognize the public interest in sound natural resource protection provided by the Act and the Compact, including the protection to public resources, recreation, and scenic beauty. These rules are designed to achieve a comprehensive system of laws and rules for forest practices in the CRGNSA special management area which avoids unnecessary duplication, provides for interagency input and intergovernmental and tribal

coordination and cooperation, considers reasonable land use planning goals contained in the CRGNSA management plan, and fosters cooperation among public resources managers, forest landowners, tribes and the citizens.

(b) The CRGNSA special management area guidelines shall apply to all forest practices within the CRGNSA special management area. Other forest practices rules also apply to these forest practices. To the extent these other rules are inconsistent with the guidelines, the more restrictive requirement controls. To the extent there is an incompatibility between the guidelines and another rule, the guidelines control. Copies of the guidelines can be obtained from the department's Southeast and Pacific Cascade regional offices and Olympia office, as well as from the Columbia River Gorge commission and the U.S. Forest Service.

(c) The department shall review and consider the U.S. Forest Service review statement and shall consult with the U.S. Forest Service and the Columbia River Gorge commission prior to making any determination on conditioning an application or notification within the CRGNSA special management area.

AMENDATORY SECTION (Amending Order 535, filed 11/16/87, effective 1/1/88)

**WAC 222-20-090 Options for filing applications and preapplication consultation for forest practices hydraulic projects.** (1) Applicants may schedule an early review of a proposed application with the department prior to official filing, or submit an application with a delayed effective date. Such early review or submission will allow the department to review multiple applications and bring other forest practices concerns to the attention of the applicant so that such concerns can be addressed prior to official filing and processing of an application. When submitting an application with a delayed effective date, the applicant shall indicate the date when approval is desired.

(2) Preapplication consultation for forest practices hydraulic projects. Landowners are encouraged to consult with the department and the department of fish and wildlife prior to submitting an application involving a forest practices hydraulic project to help ensure that project plans and specifications meet fish protection standards.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

**WAC 222-24-010 Policy.** \*(1) A well designed, located, constructed, and maintained system of forest roads is essential to forest management and protection of the public resources. Riparian areas contain some of the more productive conditions for growing timber, are heavily used by wildlife and provide essential habitat for fish and wildlife and essential functions in the protection of water quality. Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems.

\*(2) To protect water quality and riparian habitat, roads must be constructed and maintained in a manner that will prevent potential or actual damage to public resources. This will

be accomplished by constructing and maintaining roads so as not to result in the delivery of sediment and surface water to any typed water in amounts, at times or by means, that preclude achieving desired fish habitat and water quality by:

- Providing for free and unimpeded passage for fish ((passage)) at all life stages ((~~see Washington state department of fish and wildlife hydraulic code Title 220 WAC~~));
- Preventing mass wasting;
- Limiting delivery of sediment and surface runoff to all typed waters;
- Avoiding capture and redirection of surface or groundwater. This includes retaining streams in their natural drainages and routing subsurface flow captured by roads and road ditches back onto the forest floor;
- Diverting most road runoff to the forest floor;
- ((~~Providing for the passage of~~)) Designing water crossing structures to the 100-year flood level to provide for the passage of bedload and some woody debris;
- Protecting stream bank stability, the existing stream channel, and riparian vegetation;
- Minimizing the construction of new roads; and
- Assuring no-net-loss of wetland function; and
- Assuring no-net-loss of fish habitat.

The rules for road construction and maintenance ((~~rules in this chapter~~)) and forest practices hydraulic projects must be applied in achieving these goals. Additional guidance is identified in board manual sections 3 and 5. If these goals are not achieved using the rules and the applied guidance, additional management strategies must be employed.

\*(3) Extra protection is required during road construction and maintenance and for forest practices hydraulic projects to protect public resources and timber growing potential. Landowners and fisheries and wildlife managers are encouraged to cooperate in the development of road management and abandonment plans. Landowners are further encouraged to cooperate in sharing roads to minimize road mileage and avoid duplicative road construction.

\*(4) This section covers the location, design, construction, maintenance and abandonment of forest roads, bridges, stream crossings, quarries, borrow pits, and disposal sites used for forest road construction and is intended to assist landowners in proper road planning, construction and maintenance so as to protect public resources.

(Note: Other laws and rules and/or permit requirements may apply. See chapter 222-50 WAC.)

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

**WAC 222-24-020 Road location and design.** (1) **Fit the road to the topography** so that a minimum of alterations to the natural features will occur.

\*(2) Except for crossings, new stream-adjacent parallel roads shall not be located within natural drainage channels, channel migration zones, sensitive sites, equipment limitation zones, and riparian management zones when there would be substantial loss or damage to fish or wildlife habitat unless the department has determined that other alternatives will cause greater damage to public resources. Proposals with new stream-adjacent parallel roads will require an on-site

review by an interdisciplinary team. The appropriate federal representative(s) will be invited to attend the interdisciplinary team to determine if the proposal is in compliance with the Endangered Species Act.

\* (3) Roads shall not be constructed in bogs or low nutrient fens.

\* (4) Roads shall not be located in wetlands if there would be substantial loss or damage to wetland functions or acreage, unless the department has determined that alternatives will cause greater damage to public resources.

\* (5) Minimize the number of stream crossings.

\* (6) Where stream crossings are necessary:

(a) Design stream crossings to minimize alterations to natural features;

(b) Locate and design culverts to minimize sediment delivery; ~~(and)~~

(c) Whenever practical, cross streams at right angles to the main channel; and

(d) Design stream crossings in Type S and F Waters to provide free and unimpeded passage for fish at all life stages.

\* (7) Avoid duplicative roads by keeping the total amount of construction to a minimum. Use existing roads whenever practical and avoid isolating patches of timber which, when removed, may require unnecessary road construction.

\* (8) All new road construction on side slopes that exceed ~~((60))~~ sixty percent, which have the potential to deliver sediment to any typed water or wetland must utilize full bench construction techniques, including end hauling, over hauling or other special techniques. The department may waive the full bench construction requirement if a site review is conducted and the absence of delivery potential to any typed water or wetlands is determined.

(9) Use the minimum design standard that produces a road sufficient to carry the anticipated traffic load with reasonable safety.

\* (10) Subgrade width should average not more than ~~((32))~~ thirty-two feet for double lane roads and ~~((20))~~ twenty feet for single lane roads, exclusive of ditches, plus any additional width necessary for safe operations on curves and turnouts. Where road location in wetlands is unavoidable (see WAC 222-24-015 (1)(b)), minimize subgrade width.

(11) Balance excavation and embankments so that as much of the excavated material as is practical will be deposited in the roadway fill sections. Where full bench construction is necessary, design suitable embankments so that the excavated material may be end hauled to appropriate deposit areas.

(12) Cut and fill slopes must be designed and constructed in a manner that will assure a high likelihood of remaining stable throughout the life of the road.

\* (13) All roads shall be outslowed or ditched on the uphill side and appropriate surface drainage shall be provided by the use of adequate drainage structures such as: Cross drains, ditches, drivable dips, relief culverts, water bars, diversion ditches, or other such structures demonstrated to be equally effective.

\* (14) Drainage structures shall not discharge onto erodible soils, or over fill slopes unless adequate outfall protection is provided.

\* (15) Relief culverts installed on forest roads shall meet the following minimum specifications: (See ~~((the))~~ board manual~~(:)~~ section 3 for culvert spacing.)

(a) Be at least ~~((18))~~ eighteen inches in diameter or equivalent in western Washington and ~~((15))~~ fifteen inches in diameter or equivalent in eastern Washington.

(b) Be installed in a manner that efficiently captures ditchline flow and passes it to the outside of the road.

\* (16) Ditch diversion. Where roadside ditches slope toward any typed water, or Type A or B Wetland, a ditch relief structure must be located as close to the stream crossing or wetland as possible so it drains off before reaching the stream. On stream-adjacent parallel roads, relief culverts shall be located at maximum distances from stream channels to minimize sediment delivery. The relief structure must allow the sediment to be deposited onto the forest floor and not carry surface water or sediment into the stream channel or wetland.

\* (17) Outslope the road surface where practical. Where outslowing is not practical, provide a ditch with drainage structure on the inside of the road, except where roads are constructed in rock or other materials not readily susceptible to erosion.

\* (18) Crown or slope the road to prevent the accumulation of water on the road surface.

\* (19) Install rock armor headwall inlets on all stream-crossing culverts where the stream gradient above the crossing is greater than ~~((6))~~ six percent.

\* (20) Install rock armored headwalls and rock armored ditchblocks for drainage structure culverts located on erodible soils or where the affected road has a gradient greater than ~~((6))~~ six percent.

\* (21) Install drainage structures at locations where seeps and springs are known or discovered during construction to route accumulated surface water across the road prism. The water from the seeps and springs must be returned to the forest floor as close to the point of origin as reasonably practicable.

\* (22) In addition to information required for a complete application, the department may require ~~((additional))~~ more detailed information for proposed road construction ~~((as part of a complete application))~~, including:

(a) A map with detailed topographic information showing the location and alignment of the road in relation to all typed water and wetlands as required in WAC 222-16-035;

(b) Location, size, alignment and number of water crossing and drainage structures;

(c) Detailed plans for bridges, ~~((large))~~ culverts or other complex elements of the proposal; and

(d) Other information identified by the department.

## NEW SECTION

**WAC 222-24-038 Preapplication consultation and road-related forest practices hydraulic projects.** Landowners contemplating forest practices hydraulic projects related to road construction and maintenance are encouraged to consult with the department and the department of fish and wildlife prior to submitting an application to help ensure that

project plans and specifications meet fish protection standards.

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

**WAC 222-24-040 \*Water crossing structures for all typed waters. (~~\*(1) General provisions for all typed waters.~~**

~~In addition to the applicable general provisions below, installation, maintenance and removal of water crossing structures in or across the bankfull width of Type S or F Waters are subject to hydraulic code rules, chapter 220-110 WAC, and require hydraulic project approval (HPA) issued by the department of fish and wildlife. HPAs may be required on Type Ns and Np Waters.~~

~~((a)) (1) Bridges are required for new crossings and reconstructed crossings of any typed waters regularly used for recreational boating.~~

~~((b)) (2) Structures containing concrete must be sufficiently cured prior to contact with water.~~

~~((c)) (3) One end of each new or reconstructed permanent log or wood bridge shall be tied or firmly anchored if any of the bridge structure is within ~~((4)) ten~~ vertical feet of the 100-year flood level.~~

~~((d)) (4) Alterations or disturbance of the stream bed, bank or bank vegetation must be limited to that necessary to construct the project. All disturbed areas must be stabilized and restored according to the recommended schedule and procedures found in ~~((section 3 of the))~~ board manual section 5. This requirement may be modified or waived by the department, in consultation with the department of fish and wildlife, if precluded by engineering or safety factors.~~

~~((e)) (5) When earthen materials are used for bridge surfacing, only clean sorted gravel may be used, a geotextile lining must be installed and curbs of sufficient size shall be installed to a height above the surface material to prevent surface material from falling into the stream bed.~~

~~((f)) (6) Wood removed from the upstream end of culverts and bridges will be placed at the downstream end of such culverts and bridges in such a way as to minimize obstruction of fish passage and to the extent practical, while avoiding significant disturbance of sediment~~((s))~~ in connection with maintenance activities.~~

~~\*(2) **Bridges over Type Np and Ns Waters.** In addition to the applicable general provisions above, installation, maintenance, and removal of permanent bridges in or across Type Np and Ns Waters are subject to the following:~~

~~(a) Permanent bridges must not constrict clearly defined channels and must be designed and installed to pass the 100-year flood. The bridge and its associated embankments and fills must provide sufficient erosion protection to withstand a 100-year flood event.~~

~~(b) Excavation for and placement of the bridge foundation and superstructure must be located and conducted from outside the outer edge of the bankfull width. This requirement may be waived by the department, in consultation with the department of fish and wildlife, if it can be demonstrated that these activities may be conducted in such a manner to prevent damage to public resources.~~

~~(c) Earthen embankments constructed for use as bridge approaches must be provided with sufficient erosion protection to withstand a 100-year flood event.~~

~~\*(3) **Culvert installation for Type Np and Ns Waters.** In addition to applicable general provisions above, installation, maintenance and removal of permanent culverts in or across Type Np and Ns Waters are subject to the following provisions:~~

~~(a) All permanent culverts must be designed to pass the 100-year flood event with consideration for the passage of debris likely to be encountered.~~

~~(b) The culvert and its associated embankments and fills must have sufficient erosion protection to withstand the 100-year flood event. Erosion protection may include armored overflows or the use of clean coarse fill material.~~

~~(c) If the department determines that because of unstable slopes the culvert size shown in the board manual, section 3; "Determining Culvert Size, Method A" would be inadequate to protect public resources, it may require a larger culvert designed using generally accepted engineering principles that meet the standards in (a) and (b) of this subsection.~~

~~(d) No permanent culverts shall be installed that are smaller than:~~

~~(i) 24 inches for Type Np Waters;~~

~~(ii) 18 inches for Type Ns Waters in western Washington;~~

~~(iii) 15 inches for Type Ns Waters in eastern Washington;~~

~~(e) The alignment and slope of the culvert shall parallel the natural flow of the stream whenever possible.~~

~~(f) Culverts must be designed and installed so they will not cause scouring of the stream bed and erosion of the banks in the vicinity of the project.~~

~~(g) When the department determines that installing a culvert in a flowing stream will result in excessive siltation and turbidity, and siltation and turbidity would be reduced if stream flow were diverted, the department shall require the stream flow be diverted using a bypass flume or culvert, or by pumping the stream flow around the work area. This may include culvert installations that are within 0.25 miles of a Type S or F Water or within two miles of a hatchery intake in consultation with the department of fish and wildlife.~~

~~(h) Fill associated with culvert installation must have sufficient erosion protection to withstand the 100-year flood.~~

~~(i) Stream beds shall be cleared for a distance of 50 feet upstream from the culvert inlet of such slash or debris that reasonably may be expected to plug the culvert.~~

~~(j) The entrance of all culverts shall have adequate catch basins and headwalls to minimize the possibility of erosion or fill failure.~~

~~\*(4) **Temporary water crossings in Type Np and Ns Waters.** In addition to the applicable general provisions above, installation, maintenance and removal of temporary bridges or other structures in or across Type Np and Ns Waters are subject to the following:~~

~~(a) A temporary water crossing is intended for use during the life of an approved application/notification.~~

~~(b) It must be constructed to facilitate abandonment when the intended use is complete or upon seasonal shut-down, whichever is sooner.~~

~~(c) Temporary water crossings must be identified on the forest practices application or notification, along with an abandonment date.~~

~~(d) Temporary water crossings may be used:~~

~~(i) In western Washington if installed after June 1 and removed by September 30 of the same year.~~

~~(ii) In eastern Washington if installed after the spring runoff and removed prior to October 15th.~~

~~(iii) At other times, when the department and applicant can agree to specific dates of installation and removal and the extended dates result in equivalent levels of resource protection.~~

~~(e) Temporary water crossings must be designed to pass the highest peak flow event expected to occur during the length of its intended use.~~

~~(f) When the department determines that installing a culvert in a flowing stream will result in excessive siltation and turbidity, and siltation and turbidity would be reduced if stream flow were diverted, the department shall require the stream flow be diverted using a bypass flume or culvert, or by pumping the stream flow around the work area. This may include culvert installations that are within 0.25 miles of a Type S or F Water or within two miles of a hatchery intake, in consultation with the department of fish and wildlife.~~

~~(g) Temporary water crossings shall be promptly removed and abandoned to the specifications approved by the department upon completion of use or by the date specified in the approved forest practices application, whichever is earlier. Approaches to the crossing shall be water barred and stabilized at the time of the crossing removal. The department may waive removal of the water crossing if the applicant secures an amended forest practices application, and the structure and its approaches meet all of the requirements of a permanent water crossing structure.~~

~~(h) Temporary wetland crossings shall be abandoned and restored based on a written plan approved by the department prior to construction.~~

~~(i) Temporary water crossings must be designed to provide the same level of protection for public resources as provided by rules during the length of its use.~~

~~\*(5) Properly prepared and maintained fords may be used in Type Np and Ns Waters during periods of low water.~~

~~(a) Entry and exit points for each ford must be located as close to perpendicular along the stream as possible, but will not exceed 100 feet upstream or downstream of each other. Approaches to the ford will not run adjacent to the stream.~~

~~(b) Ford locations must be shown on the forest practices application.~~

~~(c) Best management practices for construction, maintenance and use will be utilized as appropriate or as required by conditions on the approved forest practices application.)) (7) Fords.~~

~~(a) New ford construction requires a forest practices application.~~

~~(b) The entry and exit points of a new ford must not be within one hundred feet upstream or downstream of another ford.~~

~~(c) The following activities associated with established fords require a forest practices application:~~

~~(i) Ford repair with equipment or construction work waterward of the bankfull width;~~

~~(ii) Driving a vehicle or operating equipment on or across wetted stream beds at areas other than established fords.~~

~~(d) Driving a vehicle or operating equipment on or across an established ford does not require a forest practices application.~~

~~(e) "Established ford" means a crossing place in a watercourse that was in existence and annually used prior to 1986 or subsequently permitted by the department, and has identifiable approaches on the banks.~~

## NEW SECTION

**WAC 222-24-041 \*Water crossing structures in Type S and F Waters.** (1) In Type S and F Waters, bridges are preferred as water crossing structures in order to ensure free and unimpeded fish passage for adult and juvenile fishes and preserve spawning and rearing habitat. Pier placement within bankfull width shall be avoided where practical. Other structures which may be approved include, in descending order of preference: Temporary culverts; bottomless arch culverts; arch culverts; round culverts; and fords. Corrugated culverts are generally preferred over smooth surfaced culverts. Culvert baffles and downstream control weirs are discouraged except to correct fish passage problems at existing structures.

(2) An approved forest practices application is required for construction, structural work, and maintenance associated with any bridge structure. Typical maintenance includes painting and other activities where there is potential for wastage of paint, sandblasting material, sediments, or bridge parts into the water, or where the work, including equipment operation, occurs within bankfull width of the stream.

(3) Water crossing structure projects shall incorporate mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat.

### **(4) Bridge construction.**

(a) Excavation for and placement of the foundation and superstructure shall be outside the bankfull width unless the construction site is separated from the stream by use of an approved dike, cofferdam, or similar structure.

(b) The bridge structure or stringers shall be placed in a manner to minimize damage to the bed.

(c) Alteration or disturbance of bank or bank vegetation shall be limited to that necessary to construct the project. All disturbed areas shall be protected from erosion within seven days of completion of the project, using vegetation or other means. The banks shall be revegetated with native or other approved woody species and maintained as necessary to ensure survival. See board manual section 5 for technical guidance.

(d) Removal of existing or temporary structures shall be accomplished so that the structure and associated material does not enter the stream.

(e) The bridge shall be constructed, according to the approved design, to pass the 100-year flood level and debris likely to be encountered. Exception shall be granted if appli-

cant provides hydrologic or other information that supports alternative design criteria.

(f) Wastewater from project activities and water removed from within the work area shall be routed and deposited to the forest floor in an upland area to allow removal of fine sediment and other contaminants prior to being discharged to typed waters.

(g) Structures containing concrete shall be sufficiently cured prior to contact with water to avoid leaching.

(h) Abutments, piers, piling, sills, approach fills, etc., shall not constrict the flow so as to cause any appreciable increase (not to exceed 0.2 feet) in backwater elevation (calculated at the 100-year flood level) or channel wide scour and shall be aligned to cause the least effect on the hydraulics of the watercourse.

(i) Riprap materials used for structure protection shall be angular rock and the placement shall be installed according to an approved design to withstand the 100-year flood level.

(5) Temporary culvert installation. The allowable placement of temporary culverts and time limitations shall be determined by the department based on the specific fish resources of concern at the proposed location of the culvert. See board manual section 5 for guidance on temporary culvert installation.

(a) Where fish passage is a concern, temporary culverts shall be installed according to an approved design based on the definition of bankfull width for culvert design and construction in WAC 222-16-010, to provide adequate fish passage. In these cases, the temporary culvert installation shall meet the fish passage design criteria in Table 1 in subsection (6) of this section.

(b) Where culverts are left in place during the period of September 30th to June 15th, the culvert shall be designed to maintain structural integrity to the 100-year flood level with consideration of the debris loading likely to be encountered.

(c) Where culverts are left in place during the period June 16th to September 30th, the culvert shall be designed to maintain structural integrity at a peak flow expected during the entire period the culvert will be in place.

(d) Disturbance of the bed and banks shall be limited to that necessary to place the culvert and any required channel modification associated with it. Affected bed and bank areas outside the culvert shall be restored to preproject condition following installation of the culvert.

(e) The culvert shall be installed in the dry, or in isolation from stream flow by the installation of a bypass flume or culvert, or by pumping the stream flow around the work area. Exception may be granted if siltation or turbidity is reduced by installing the culvert in the flowing stream. The bypass reach shall be limited to the minimum distance necessary to complete the project. Fish stranded in the bypass reach shall be safely removed to the flowing stream.

(f) Wastewater from project activities and dewatering shall be routed and deposited to the forest floor in an upland area to allow removal of fine sediment and other contaminants prior to being discharged to typed waters.

(g) Imported fill which will remain in the stream after culvert removal shall consist of clean rounded gravel ranging in size from one-quarter to three inches in diameter. The use of angular rock may be approved from June 16th to Septem-

ber 30th, where rounded rock is unavailable. Angular rock shall be removed from the watercourse and the site restored to preproject conditions upon removal of the temporary culvert.

(h) The culvert and fill shall be removed and the disturbed bed and bank areas shall be reshaped to preproject configuration. All disturbed areas shall be protected from erosion, within seven days of completion of the project, using vegetation or other means. The banks shall be revegetated with native or other approved woody species and maintained as necessary to ensure survival. See board manual section 5 for technical guidance.

(i) The temporary culvert shall be removed and the approaches shall be blocked to vehicular traffic prior to the expiration of the work window as conditioned for the specific hydraulic project in the forest practices application.

(j) Temporary culverts must be removed prior to the expiration of the forest practices application.

**(6) Permanent culvert installation.**

(a) In fish bearing waters or waters upstream of a fish passage barrier (which can reasonably be expected to be corrected, and if corrected, fish presence would be reestablished), culverts shall be designed and installed so as not to impede fish passage. Culverts shall only be approved for installation in spawning areas where full replacement of impacted habitat is provided by the applicant.

(b) To facilitate fish passage, culverts shall be designed based on bankfull width to the following standards:

(i) Culverts may be approved for placement in small streams if placed on a flat gradient with the bottom of the culvert placed below the level of the streambed a minimum of twenty percent of the culvert diameter for round culverts, or twenty percent of the vertical rise or structure height for elliptical culverts (this depth consideration does not apply within bottomless culverts). Footings of bottomless culverts shall be buried sufficiently deep so they will not become exposed by scour within the culvert. The twenty percent placement below the streambed shall be measured at the culvert outlet. The culvert width at the bed, or footing width, shall be equal to or greater than the average width of the bed of the stream.

(ii) Where culvert placement is not feasible as described in (b)(i) of this subsection, the culvert design shall include the elements in (b)(ii)(A) through (E) of this subsection:

(A) Water depth at any location within culverts as installed and without a natural bed shall not be less than that identified in Table 1. The low flow design, to be used to determine the minimum depth of flow in the culvert, is the two-year seven-day low flow discharge for the subject basin or ninety-five percent exceedance flow for migration months of the fish species of concern. Where flow information is unavailable for the drainage in which the project will be conducted, calibrated flows from comparable gauged drainages may be used, or the depth may be determined using the installed no-flow condition.

(B) The high flow design discharge, used to determine maximum velocity in the culvert (see Table 1), is the flow that is not exceeded more than ten percent of the time during the months of adult fish migration. The two-year peak flood flow may be used where stream flow data are unavailable.



(C) The hydraulic drop is the abrupt drop in water surface measured at any point within or at the outlet of a culvert. The maximum hydraulic drop criteria must be satisfied at all flows between the low and high flow design criteria.

(D) The bottom of the culvert shall be placed below the natural channel grade a minimum of twenty percent of the culvert diameter for round culverts, or twenty percent of the vertical rise or structural height for elliptical culverts (this depth consideration does not apply within bottomless culverts). The downstream bed elevation, used for hydraulic calculations and culvert placement in relation to bed elevation, shall be taken at a point downstream at least four times the average width of the stream (this point need not exceed twenty-five feet from the downstream end of the culvert). The culvert capacity for flood design flow shall be determined by using the remaining capacity of the culvert.

**Table 1  
Fish Passage Design Criteria for Culvert Installation**

Criteria	Adult Trout > 6 in. (150 mm)	Adult Pink, Chum Salmon	Adult Chinook, Coho, Sockeye, Steelhead
1. Velocity, Maximum (fps)			
Culvert Length (ft)			
a. 10 - 60	4.0	5.0	6.0
b. 60 - 100	4.0	4.0	5.0
c. 100 - 200	3.0	3.0	4.0
d. > 200	2.0	2.0	3.0
2. Flow Depth Minimum (ft)	0.8	0.8	1.0
3. Hydraulic Drop, Maximum (ft)	0.8	0.8	1.0

(E) Appropriate statistical or hydraulic methods must be applied for the determination of flows in (b)(ii)(A) and (B) of this subsection. These design flow criteria may be modified for specific proposals as necessary to address unusual fish passage requirements, where other approved methods of empirical analysis are provided, or where the fish passage provisions of other special facilities are approved by the department.

(F) Culvert design shall include consideration of flood capacity for current conditions and future changes likely to be encountered within the stream channel, and debris and bedload passage.

(c) Culverts shall be installed according to an approved design to maintain structural integrity to the 100-year flood level with consideration of the debris loading likely to be encountered. Exception may be granted if the applicant provides justification for a different level or a design that routes the flow past the culvert without jeopardizing the culvert or associated fill.

(d) Disturbance of the bed and banks shall be limited to that necessary to place the culvert and any required channel modification associated with it. Affected bed and bank areas outside the culvert and associated fill shall be revegetated with native or other approved woody species and maintained as necessary to ensure survival. See board manual section 5 for technical guidance.

(e) Fill associated with the culvert installation shall be protected from erosion to the 100-year flood level.

(f) Culverts shall be designed and installed to avoid inlet scouring and shall be designed in a manner to prevent erosion of stream banks downstream of the project.

(g) Where fish passage criteria are required, the culvert facility shall be maintained by the landowner(s), such that fish passage design criteria in Table 1 are not exceeded. If the structure becomes a hindrance to fish passage, the landowner shall be responsible for obtaining an approved forest practices application and providing prompt repair.

(h) The culvert shall be installed in the dry or in isolation from the stream flow by the installation of a bypass flume or culvert, or by pumping the stream flow around the work area. Exception may be granted if siltation or turbidity is reduced by installing the culvert in the flowing stream. The bypass reach shall be limited to the minimum distance necessary to complete the project. Fish stranded in the bypass reach shall be safely removed to the flowing stream.

(i) Wastewater from project activities and dewatering shall be routed to the forest floor in an upland area as necessary to allow removal of fine sediment and other contaminants prior to being discharged to any typed water or wetland.

(7) **Alternative designs** will be considered if they can be demonstrated to meet or exceed fish protection standards. Alternative designs may require additional review.

**NEW SECTION**

**WAC 222-24-042 \*Water crossing structures in Type Np and Ns Waters. \*(1) Bridges over Type Np and Ns Waters.** In addition to the applicable general provisions in WAC 222-24-040, the installation, maintenance, and removal of permanent bridges in or across Type Np and Ns Waters are subject to the following:

(a) Permanent bridges must not constrict clearly defined channels and must be designed and installed to pass the 100-year flood. The bridge and its associated embankments and fills must provide sufficient erosion protection to withstand a 100-year flood event.

(b) Excavation for and placement of the bridge foundation and superstructure must be located and conducted from outside the outer edge of the bankfull width. This requirement may be waived by the department if it can be demonstrated that these activities may be conducted in such a manner to prevent damage to public resources.

(c) Earthen embankments constructed for use as bridge approaches must be provided with sufficient erosion protection to withstand a 100-year flood event.

**\*(2) Culvert installation for Type Np and Ns Waters.** In addition to applicable general provisions in WAC 222-24-040, the installation, maintenance and removal of permanent culverts in or across Type Np and Ns Waters are subject to the following provisions:

(a) All permanent culverts must be designed to pass the 100-year flood event with consideration for the passage of debris likely to be encountered.

(b) The culvert and its associated embankments and fills must have sufficient erosion protection to withstand the 100-

year flood event. Erosion protection may include armored overflows or the use of clean coarse fill material.

(c) If the department determines that because of unstable slopes the culvert size shown in board manual section 5, "Determining Culvert Size, Method A" would be inadequate to protect public resources, it may require a larger culvert designed using generally accepted engineering principles that meet the standards in (a) and (b) of this subsection.

(d) No permanent culverts shall be installed that are smaller than:

- (i) Twenty-four inches for Type Np Waters;
- (ii) Eighteen inches for Type Ns Waters in western Washington; and
- (iii) Fifteen inches for Type Ns Waters in eastern Washington.

(e) The alignment and slope of the culvert shall parallel the natural flow of the stream whenever possible.

(f) Culverts must be designed and installed so they will not cause scouring of the stream bed and erosion of the banks in the vicinity of the project.

(g) When the department determines that installing a culvert in a flowing stream will result in excessive siltation and turbidity, and siltation and turbidity would be reduced if stream flow were diverted, the department shall require the stream flow be diverted using a bypass flume or culvert, or by pumping the stream flow around the work area. This may include culvert installations that are within 0.25 miles of a Type S or F Water or within two miles of a hatchery intake in consultation with the department of fish and wildlife.

(h) Fill associated with culvert installation must have sufficient erosion protection to withstand the 100-year flood event.

(i) Stream beds shall be cleared for a distance of fifty feet upstream from the culvert inlet of such slash or debris that reasonably may be expected to plug the culvert.

(j) The entrance of all culverts shall have adequate headwalls constructed to minimize the possibility of erosion or fill failure.

**\*(3) Temporary water crossings in Type Np and Ns Waters.** In addition to the applicable general provisions above, installation, maintenance and removal of temporary bridges or other structures in or across Type Np and Ns Waters are subject to the following:

(a) A temporary water crossing is intended for use during the life of an approved application/notification.

(b) It must be constructed to facilitate abandonment when the intended use is complete or upon seasonal shutdown, whichever is sooner.

(c) Temporary water crossings must be identified on the forest practices application or notification, along with an abandonment date.

(d) Temporary water crossings may be used:

(i) In western Washington if installed after June 1st and removed by September 30th of the same year.

(ii) In eastern Washington if installed after the spring runoff and removed prior to October 15th.

(iii) At other times, when the department and applicant can agree to specific dates of installation and removal and the extended dates result in equivalent levels of resource protection.

(e) Temporary water crossings must be designed to pass the highest peak flow event expected to occur during the length of its intended use.

(f) When the department determines that installing a culvert in a flowing stream will result in excessive siltation and turbidity, and siltation and turbidity would be reduced if stream flow were diverted, the department shall require the stream flow be diverted using a bypass flume or culvert, or by pumping the stream flow around the work area. This may include culvert installations that are within 0.25 miles of a Type S or F Water or within two miles of a hatchery intake.

(g) Temporary water crossings shall be promptly removed and abandoned to the specifications approved by the department upon completion of use or by the date specified in the approved forest practices application, whichever is earlier. Approaches to the crossing shall be water barred and stabilized at the time of the crossing removal. The department may waive removal of the water crossing if the applicant secures an amended forest practices application, and the structure and its approaches meet all of the requirements of a permanent water crossing structure.

(h) Temporary wetland crossings shall be abandoned and restored based on a written plan approved by the department prior to construction.

(i) Temporary water crossings must be designed to provide the same level of protection for public resources as provided by rules during the length of its use.

#### NEW SECTION

**WAC 222-24-044 \*Temporary bypass culverts, flumes, or channels.** Temporary bypass culvert, flume, or channel projects shall incorporate mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat. The following shall apply to temporary bypass culvert, flume, or channel projects:

(1) The temporary bypass culvert, flume, or channel shall be in place prior to initiation of other work in the wetted perimeter.

(2) A sandbag revetment or similar device shall be installed at the inlet to divert the entire flow through the culvert, flume, or channel.

(3) A sandbag revetment or similar device shall be installed at the downstream end of the culvert, flume, or channel to prevent backwater from entering the work area.

(4) The culvert, flume, or channel shall be of sufficient size to pass flows and debris for the duration of the project.

(5) For diversion of flow into a temporary channel the relevant provisions of WAC 222-110-080, channel change/realignment, shall apply.

(6) Prior to releasing the water flow to the project area, all bank protection or armoring shall be completed. See board manual section 5 for project site preparation best management practices.

(7) Upon completion of the project, all material used in the temporary bypass shall be removed from the site and the site returned to preproject conditions.

(8) The department may require fish capture and safe transport from the project site to the nearest free-flowing water if fish could be adversely impacted as a result of the

project. The department of fish and wildlife may assist in capturing and safely removing fish to free-flowing water if personnel are available.

(9) Alteration or disturbance of the banks and bank vegetation shall be limited to that necessary to construct the project. All disturbed areas shall be protected from erosion within seven days of completion of the project using vegetation or other means. The banks shall be revegetated with native or other approved woody species and maintained as necessary to ensure survival. See board manual section 5 for technical guidance.

#### NEW SECTION

**WAC 222-24-046 \*Bank protection.** Bio-engineering is the preferred method of bank protection where practical. Bank protection projects shall incorporate mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat. The following shall apply to bank protection projects:

(1) Bank protection work shall be restricted to work necessary to protect eroding banks.

(2) Bank protection material placement waterward of the bankfull width shall be restricted to the minimum amount necessary to protect the toe of the bank, or for installation of mitigation features approved by the department.

(3) The toe shall be designed to protect the integrity of bank protection material.

(4) Bank sloping shall be accomplished in a manner that avoids release of overburden material into the water. Overburden material resulting from the project shall be deposited so as not to reenter the water.

(5) Alteration or disturbance of the bank and bank vegetation shall be limited to that necessary to construct the project. All disturbed areas shall be protected from erosion within seven days of completion of the project using vegetation or other means. The banks, including riprap areas, shall be revegetated with native or other approved woody species and maintained to ensure survival. See board manual section 5 for technical guidance.

(6) Fish habitat components such as logs, stumps, and/or large boulders may be required as part of the bank protection project to mitigate project impacts. These fish habitat components shall be installed according to an approved design to withstand 100-year peak flows.

(7) When rock or other hard materials are approved for bank protection, the following provisions shall apply:

(a) Bank protection material shall be angular rock. The project shall be designed and the rock installed to withstand 100-year peak flows. River gravels shall not be used as exterior armor, except as specifically approved by the department.

(b) Bank protection and filter blanket material shall be placed from the bank or a barge. Dumping onto the bank face shall be permitted only if the toe is established and the material can be confined to the bank face.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

**WAC 222-24-0511 \*Small forest landowner road maintenance planning.** (1) Small forest landowners who own a total of eighty acres or less forest land in Washington state are not required to submit any road maintenance and abandonment plan for any block of forest land that contains twenty contiguous acres or less.

(2) Small forest landowners other than those described in subsection (1) of this section, are only required to submit a checklist road maintenance and abandonment plan when they submit a forest practices application or notification that includes timber harvest or salvage. The checklist must include all their forest roads that are used for the forest practice. Instead of a checklist, landowners may submit a road maintenance and abandonment plan as described in WAC 222-24-051 with the following modifications:

- They are not required to submit an annual report.
- If they participate in the family forest fish passage program, they may schedule their barrier projects accordingly.

(3) Forest roads must be maintained only to the extent necessary to prevent damage to public resources.

\*(4) If the department determines that a road will cause or has the potential to cause damage to a public resource, the department may require the applicant to submit a compliance schedule of work to fix the problem(s) identified by the department.

(5) Fish passage barriers will be assessed on a watershed basis focusing on fixing the worst barriers first.

(a) The department's family forest fish passage program is available to assist with the removal, replacement, or repair of fish passage barriers that were installed prior to May 14, 2003. The program includes limits on landowner costs and the opportunity for in-kind contributions. One hundred percent public funding shall be provided if an existing barrier was installed under an approved forest practices application ~~(, and)~~ or a hydraulics project approval acquired prior to December 31, 2013, and that barrier becomes a high priority for replacement.

(b) Small forest landowners who participate in the family forest fish passage program are not required to remove, replace or repair barriers until cost share funding is available and higher priority barriers on lands within the watershed have been removed or funded. Small forest landowners participating in the program may make use of prioritization without any obligations to receive funding from the program.

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

**WAC 222-30-020 \*Harvest unit planning and design.** (1) Preapplication consultation and harvest-related forest practices hydraulic projects.

(a) Landowners contemplating forest practices hydraulic projects related to timber harvest are encouraged to consult with the department and the department of fish and wildlife prior to submitting an application to help ensure that project plans and specifications meet fish protection standards.

(b) Harvest-related forest practices hydraulic projects include, but are not limited to, projects associated with:

- (i) Felling and bucking (WAC 222-30-050);
- (ii) Cable yarding (WAC 222-30-060); and
- (iii) Large woody material removal or repositioning (WAC 222-30-062).

**(2) Logging system.** The logging system, including forest biomass removal operations, should be appropriate for the terrain, soils, and timber type so that yarding or skidding can be economically accomplished and achieve the ecological goals of WAC 222-30-010 (2), (3) and (4) in compliance with these rules.

~~\*(2)~~ **(3) Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

~~\*(3)~~ **(4) Western Washington riparian management zones.** (See WAC 222-30-021 and 222-30-023.)

~~\*(4)~~ **(5) Eastern Washington riparian management zones.** (See WAC 222-30-022 and 222-30-023.)

~~\*(5)~~ **(6) Riparian leave tree areas.** (See WAC 222-30-021, 222-30-022, and 222-30-023.)

~~\*(6)~~ **(7) Forested wetlands.** Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. Where feasible, at least one end of the log shall be suspended during yarding.

(a) When forested wetlands are included within the harvest area, landowners are encouraged to leave a portion ~~((30 to 70%))~~ thirty to seventy percent of the wildlife reserve tree requirement for the harvest area within a wetland. In order to retain undisturbed habitat within forested wetlands, these trees should be left in clumps. Leave tree areas should be clumped adjacent to streams, riparian management zones, or wetland management zones where possible and they exist within forested wetlands. Green recruitment trees should be representative of the size and species found within the wetland. Leave nonmerchantable trees standing where feasible.

(b) If a RMZ or WMZ lies within a forested wetland, the leave tree requirement associated with those areas may be counted toward the percentages in (a) of this subsection.

(c) Where riparian associated wetlands are present in the outer zone of a RMZ, trees may be left in the zone to maximize wetland function. See WAC 222-30-021 \*(1)(c)(ii).

(d) If the conditions described in (a) and (b) of this subsection are met, the distribution requirements for wildlife reserve trees and green recruitment trees (subsection (11)(e) of this section) are modified as follows: For purposes of distribution, no point within the harvest unit shall be more than ~~((400))~~ one thousand feet from a wildlife reserve tree and green recruitment tree retention area.

(e) Approximate determination of the boundaries of forested wetlands greater than ~~((3))~~ three acres shall be required. Approximate boundaries and areas shall be deemed to be sufficient for harvest operations.

(f) The department shall consult with the department of fish and wildlife and affected Indian tribes about site specific impacts of forest practices on wetland-sensitive species in forested wetlands.

~~\*(7)~~ **(8) Wetland management zones (WMZ).** These zones shall apply to Type A and B Wetlands, as indicated in (a) of this subsection, and shall be measured horizontally from the wetland edge or the point where the nonforested wetland becomes a forested wetland, as determined by the method described in the board manual section 8, and shall be of an average width as described in (a) of this subsection. These zones shall not be less than the minimum nor more than the maximum widths described in (a) of this subsection. When these zones overlap a riparian management zone the requirement which best protects public resources shall apply.

\*~~(a)~~ Wetland management zones (WMZ) shall have variable widths based on the size of the wetland and the wetland type, described as follows:

**Wetland Management Zones**

Wetland Type	Acres of Nonforested Wetland*	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A (including bogs)	Greater than 5	200 feet	100 feet	50 feet
A (including bogs)	0.5 to 5	100 feet	50 feet	25 feet
A (bogs only)	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ required	No WMZ required	

\* For bogs, both forested and nonforested acres are included.

(b) Within the WMZ, leave a total of ~~((75))~~ seventy-five trees per acre of WMZ greater than ~~((6))~~ six inches dbh in western Washington and greater than ~~((4))~~ four inches dbh in eastern Washington, ~~((25))~~ twenty-five of which shall be greater than ~~((2))~~ twelve inches dbh including ~~((5))~~ five trees greater than ~~((20))~~ twenty inches dbh, where they exist. Leave trees shall be representative of the species found within the WMZ.

(c) Retain wildlife reserve trees where feasible. Type 1 and 3 wildlife reserve trees may be counted among, and need not exceed, the trees required in (b) of this subsection. Leave all cull logs on site.

(d) Partial-cutting or removal of groups of trees is acceptable within the WMZ. The maximum width of openings created by harvesting within the WMZ shall not exceed ~~((400))~~ one hundred feet as measured parallel to the wetland edge. Openings within WMZs shall be no closer than ~~((200))~~ two hundred feet. Landowners are encouraged to concentrate leave trees within the WMZ to the wetland edge.

\*~~(e)~~ Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

\*~~(f)~~ When ~~((40%))~~ ten percent or more of a harvest unit lies within a wetland management zone and either the harvest

unit is a clearcut of ~~((30))~~ thirty acres or less or the harvest unit is a partial cut of ~~((80))~~ eighty acres or less, leave not less than ~~((50%))~~ fifty percent of the trees required in (b) of this subsection.

\*~~((8))~~ **(9) Type A or B Wetlands.** Within the boundaries of Type A or B Wetlands the following shall apply:

(a) Individual trees or forested wetland areas less than 0.5 acre in size may occur. These trees have a high habitat value to the nonforested wetland. Leave individual trees or forested wetlands less than 0.5 acre. These trees may be counted toward the WMZ requirements.

(b) Harvest of upland areas or forested wetlands which are surrounded by Type A or B Wetlands must be conducted in accordance with a plan, approved in writing by the department.

(c) No timber shall be felled into or cable yarded across Type A or B Wetlands without written approval of the department.

(d) Harvest shall not be allowed within a Type A Wetland which meets the definition of a bog.

~~((9))~~ **(10) Future productivity.** Harvesting shall leave the land in a condition conducive to future timber production except:

(a) To the degree required for riparian management zones; or

(b) Where the lands are being converted to another use or classified urban lands as specified in WAC 222-34-050.

~~((10))~~ **(11) Wildlife habitat.** This subsection is designed to encourage timber harvest practices that would protect wildlife habitats, provided, that such action shall not unreasonably restrict landowners action without compensation.

(a) The applicant should make every reasonable effort to cooperate with the department of fish and wildlife to identify critical habitats (state) as defined by the board. Where these habitats are known to the applicant, they shall be identified in the application or notification.

(b) Harvesting methods and patterns in established big game winter ranges should be designed to ensure adequate access routes and escape cover where practical.

(i) Where practical, cutting units should be designed to conform with topographical features.

(ii) Where practical on established big game winter ranges, cutting units should be dispersed over the area to provide cover, access for wildlife, and to increase edge effect.

~~((11))~~ **(12) Wildlife reserve tree management.** In areas where leaving wildlife reserve trees under this section will not create a significant fire hazard, or significant hazard to overhead power lines and operations that are proposed in the vicinity of wildlife reserve trees will not create a significant safety or residential hazard nor conflict with achieving conformance with the limitation of or performance with the provisions of chapter 76.04 RCW (snag falling law) and chapter 49.17 RCW (safety), wildlife reserve trees will be left to protect habitat for cavity nesting wildlife in accordance with the following:

(a) For the purposes of this subsection the following defines eastern and western Washington boundaries for wildlife reserve tree management. Beginning at the International Border and Okanogan National Forest boundary at the N1/4

corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to the SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to the SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to the SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest boundary,

Thence south along forest boundary to the SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to the SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington.

(b) In western Washington, for each acre harvested ~~((3))~~ three wildlife reserve trees, ~~((2))~~ two green recruitment trees, and ~~((2))~~ two down logs shall be left. In eastern Washington for each acre harvested ~~((2))~~ two wildlife reserve trees, ~~((2))~~ two green recruitment trees, and ~~((2))~~ two down logs shall be left. Type 1 wildlife reserve trees may be counted, at the landowner's option, either as a wildlife reserve tree or as a green recruitment tree. If adequate wildlife reserve trees are not available, no additional green recruitment trees will be required as substitutes. Landowners shall not under any circumstances be required to leave more than ~~((2))~~ two green

recruitment trees per acre for the purpose of wildlife reserve tree recruitment, or be required to leave Type 3 or 4 wildlife reserve trees.

(c) In western Washington, only those wildlife reserve trees ~~((10))~~ ten or more feet in height and ~~((12))~~ twelve or more inches dbh shall be counted toward wildlife reserve tree retention requirements. In eastern Washington, only those wildlife reserve trees ~~((10))~~ ten or more feet in height and ~~((10))~~ ten or more inches dbh shall be counted toward wildlife reserve tree retention requirements. Green recruitment trees, ~~((10))~~ ten or more inches dbh and ~~((30))~~ thirty or more feet in height and with at least ~~((1/3))~~ one-third of their height in live crown, left standing after harvest may be counted toward green recruitment tree requirements. Green recruitment trees and/or wildlife reserve trees left to meet other requirements of the rules or those left voluntarily by the landowner shall be counted toward satisfying the requirements of this section. Large, live defective trees with broken tops, cavities, and other severe defects are preferred as green recruitment trees. Only down logs with a small end diameter greater than or equal to ~~((12))~~ twelve inches and a length greater than or equal to ~~((20))~~ twenty feet or equivalent volume shall be counted under (a) of this subsection. Large cull logs are preferred as down logs.

(d) In the areas where wildlife reserve trees are left, the largest diameter wildlife reserve trees shall be retained to meet the specific needs of cavity nesters. Where the opportunity exists, larger trees with numerous cavities should be retained and count as recruitment trees.

(e) In order to facilitate safe and efficient harvesting operations, wildlife reserve trees and recruitment trees may be left in clumps. For purposes of distribution, no point within the harvest unit shall be more than ~~((800))~~ eight hundred feet from a wildlife reserve tree or green recruitment tree retention area. Subject to this distribution requirement, the location of these retention areas and the selection of recruitment trees shall be at the landowner's discretion. Closer spacing of retention areas through voluntary action of the landowner is encouraged. Wildlife reserve tree and green recruitment tree retention areas may include, but are not limited to, riparian management zones, riparian leave tree areas, other regulatory leave areas, or voluntary leave areas that contain wildlife reserve trees and/or green recruitment trees.

(f) In order to provide for safety, landowners may remove any Type 3 or 4 wildlife reserve tree, which poses a threat to humans working, recreating, or residing within the hazard area of that tree. In order to provide for fire safety, the distribution of wildlife reserve tree retention areas, described in (e) of this subsection, may be modified as necessary based on a wildlife reserve tree management plan proposed by the landowner and approved by the department.

~~((12))~~ (13) **Channel migration zones.** No harvest, construction or salvage will be permitted within the boundaries of a channel migration zone except for the construction and maintenance of road crossings in accordance with applicable rules and the creation and use of yarding corridors consistent with WAC 222-24-020(6), 222-30-060(1), and 222-30-045(2) ~~((, and chapter 220-110 WAC (Hydraulic code rules))~~.

~~((13))~~ (14) **Bankfull width.** No harvest or construction will be permitted within the bankfull width of any Type S or F Water or any buffered length of Type Np Water, except for the construction and maintenance of road crossings in accordance with applicable rules and creation and use of yarding corridors consistent with WAC 222-30-020 ~~((5)(a);)~~ (6) and 222-24-060(1) ~~((, and chapter 220-110 WAC (Hydraulic code rules))~~). No salvage may take place within the bankfull width of any typed water (see WAC 222-30-045).

**AMENDATORY SECTION** (Amending WSR 12-05-083, filed 2/17/12, effective 3/19/12)

**WAC 222-30-021 \*Western Washington riparian management zones.** These rules apply to all typed waters on forest land in western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See board manual section 7 for riparian design and layout guidelines.

**\* (1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

**"Stand requirement"** means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is one hundred forty years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	325 sq. ft.
II	325 sq. ft.
III	325 sq. ft.
IV	325 sq. ft.
V	325 sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than fifty-seven conifer trees per acre eight inches or larger dbh in the conversion area;
- There are fewer than one hundred conifer trees per acre larger than four inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;
- The landowner owns five hundred feet upstream and five hundred feet downstream of the harvest unit;
- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a seventy-five foot buffer with trees at least forty feet tall on both sides of the stream for five hundred feet upstream and five hundred feet downstream of the proposed harvest unit (or the length of the stream, if less);
- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than five hundred feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

- Type S and F (Type 1, 2, or 3) Water: Up to fifty percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

- ◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a seventy-five foot buffer of trees at least forty feet tall or:

- ◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a seventy-five foot buffer of trees at least forty feet tall.

- Not more than twenty-five percent of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than twenty inches dbh shall not be harvested;
- Not more than ten percent of the conifer stems greater than eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and
- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than eight inches dbh.

Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and
- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of one hundred fifty conifer trees greater than eight inches dbh per acre.
- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

**Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner

chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

**No inner zone management RMZ widths for western Washington**

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory

to desired future condition. See board manual section 7 for guidelines.

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.
- Thinning cannot decrease the proportion of conifer in the stand.
- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of seventy-five feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.
- The number of residual conifer trees per acre in the inner zone will equal or exceed fifty-seven.

**Option 1. Thinning from below.**

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to ten feet wide and RMZs in site class I and II for streams greater than ten feet wide. Harvest must comply with the following:

- Harvest is not permitted within thirty feet of the core zone for streams less than or equal to ten feet wide and harvest is not permitted within fifty feet of the core zone for streams greater than ten feet wide;
- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a tra-

jectory to desired future condition. See board manual section 7 for calculating stand requirements;

- A minimum of twenty conifers per acre, with a minimum twelve inch dbh, will be retained in any portion of the inner zone where even-age harvest occurs. These riparian leave trees will be counted towards meeting applicable stand requirements. The number of riparian leave trees cannot be reduced below twenty for any reason.
- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.
- If (b)(ii)(B)(II) of this subsection results in surplus basal area per the stand requirement, the landowner may take



credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the

outer zone can be reduced only to a minimum of ten trees per acre.

**Option 2. Leaving trees closest to water.**

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)		
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

\*\* Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (b)(iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (b)(iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ten trees per acre.

(C) When the basal area requirement cannot be met, as explained in (b)(iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not

meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave twenty riparian leave trees per acre after harvest. **"Outer zone riparian leave trees"** are trees that must be left after harvest in the outer zone in western Washington. Riparian leave trees must be left uncut throughout all future harvests:

**Outer zone riparian leave tree requirements**

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of twelve inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of twelve inches dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in ~~((subsection))~~ (c)(ii) ~~((below))~~ of this subsection.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;
- (V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030;

(VII) Historic sites eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(f); or

(VIII) Sites containing evidence of Native American cairns, graves or glyptic records as provided for in chapters 27.44 and 27.53 RCW. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of twelve inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

**(iii) Large woody debris in-channel placement strategy.**

(A) In order to reduce the number of required outer zone trees, a landowner may design a LWD placement plan ((~~in cooperation with the department of fish and wildlife~~) for department approval prior to submitting a forest practices application. The plan must be consistent with guidelines in board manual sections 5 and 26. ((~~The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan.~~) Landowners are encouraged to consult with the department and the department of fish and wildlife while designing the plan and prior to submitting a forest practices application.

(B) Reduction of trees in the outer zone must not go below a minimum of ten trees per acre.

(C) If this strategy is chosen, the approved plan must be included in a complete forest practices application ((~~must include a copy of the WDFW approved hydraulics project approval (HPA) permit~~)).

**(iv) Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ten inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ten inches dbh will offset conifer in the outer zone at a three-to-one ratio.

**\*(2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a thirty-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ten percent of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

**(b) Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A fifty-foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

**Required no-harvest, 50-foot buffers on Type Np Waters.**

<b>Length of Type Np Water from the confluence of Type S or F Water</b>	<b>Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)</b>
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within fifty feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within fifty feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a fifty-six foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a fifty-six foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of one hundred feet in length. If an operating area is located more than five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

**Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water**

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional two-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than twenty percent in the tailed frog habitat range;
- (C) Hyporheic and groundwater influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

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

**WAC 222-30-022 \*Eastern Washington riparian management zones.** For eastside forests, riparian management is intended to provide stand conditions that vary over time. It is designed to mimic eastside disturbance regimes within a range that meets functional conditions and maintains general forest health. These desired future conditions are a reference point on the pathway to restoration of riparian functions, not an end point of riparian stand development. These rules apply to all typed waters on forest land in eastern Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in the following section.

**Eastern Washington RMZ for streams with bankfull width of less than or equal to 15 feet wide**

Site Class	Total RMZ Width	Core Zone Width <small>From outer edge of bankfull width or outer edge of CMZ, whichever is greater</small>	Inner Zone Width	Outer Zone Width
I	130'	30'	45'	55'
II	110'	30'	45'	35'
III	90'	30'	45'	15'
IV	75'	30'	45'	0'
V	75'	30'	45'	0'

**Eastern Washington RMZ for streams with bankfull width of greater than 15 feet wide**

Site Class	Total RMZ Width	Core Zone Width <small>From outer edge of bankfull width or outer edge of CMZ, whichever is greater</small>	Inner Zone Width	Outer Zone Width
I	130'	30'	70'	30'
II	110'	30'	70'	10'
III	100'	30'	70'	0'
IV	100'	30'	70'	0'
V	100'	30'	70'	0'

**\*(1) Eastern Washington RMZs on Type S and F Waters** have three zones: The core zone is nearest to the edge of the bankfull width or outer edge of the CMZ, whichever is greater. The inner zone is the middle zone, and the outer zone is furthest from the water. Permitted forest practices vary by timber habitat type and site class.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in accordance with WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in accordance with WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See ~~(the)~~ board manual~~(s)~~ section 1.

(a) **Core zones.** The core zone extends ~~((30))~~ thirty feet measured horizontally from the edge of the bankfull width or outer edge of the CMZ, whichever is greater, for all timber habitat types. No harvest or construction is allowed in the core zone except as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors must be left on site. Any trees cut as a result of road construction to cross a stream may be removed from the site unless used as part of a large woody debris replacement strategy.

(b) **Inner zones.** Width and leave tree requirements of the inner zone vary by timber habitat type as outlined below.

(i) **Ponderosa pine timber habitat type.**

(A) The width of the inner zone is ~~((70))~~ seventy feet measured horizontally from the outer edge of the core zone on streams greater than ~~((45))~~ fifteen feet bankfull width or ~~((45))~~ forty-five feet measured horizontally from the outer edge of the core zone on streams with a bankfull width of ~~((45))~~ fifteen feet or less.

(B) No harvest is allowed in the inner zone except as described in (b)(i)(C) or (D) of this subsection, and as allowed for stream crossings and yarding corridors as described ~~((above))~~ in this subsection (1).

(C) **Stands with a high basal area:** Harvest is permitted in the inner zone if the basal area in the inner zone is greater than ~~((440))~~ one hundred ten square feet per acre for conifer and hardwood trees equal to or greater than ~~((6))~~ six inches dbh. The harvest must leave at least ~~((50))~~ fifty trees per acre AND subject to (b)(i)(C)(III) of this subsection, a

minimum leave tree basal area of at least ~~((60))~~ sixty square feet per acre. The trees to be left shall be selected as follows:

(I) The ~~((24))~~ twenty-one largest trees per acre must be left; and

(II) An additional ~~((29))~~ twenty-nine trees per acre that are ~~((40))~~ ten-inch dbh or greater must be left. If there are less than ~~((29-40))~~ twenty-nine ten-inch dbh or greater trees per acre, leave the ~~((29))~~ twenty-nine largest trees. If there are more than ~~((29-40))~~ twenty-nine ten-inch dbh or greater trees per acre, leave ~~((29-40))~~ twenty-nine ten-inch dbh or greater trees per acre based on the following priority order:

- Trees that provide shade to water;
- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010;
- Trees that are evenly distributed across the inner zone.

(III) If more than ~~((50))~~ fifty trees per acre are needed to meet the minimum leave tree basal area of ~~((60))~~ sixty square feet per acre, then additional trees greater than ~~((6))~~ six-inch dbh must be left. If the minimum basal area cannot be met with fewer than ~~((400))~~ one hundred trees of at least ~~((6))~~ six inches dbh, then no more than ~~((400))~~ one hundred trees per acre of the largest remaining trees will be required to be left regardless of the basal area.

(D) **Stands with low basal areas and high density:** Thinning is permitted if the basal area of all species is less than ~~((60))~~ sixty square feet per acre AND there are more than ~~((400))~~ one hundred trees per acre. The thinning must leave a minimum of ~~((400))~~ one hundred trees per acre. The trees to be left must be selected as follows:

(I) The ~~((50))~~ fifty largest trees per acre must be left; and

(II) An additional ~~((50))~~ fifty trees per acre that are greater than ~~((6))~~ six inches dbh must be left. If there are not ~~((50-6))~~ fifty six-inch dbh or greater trees per acre, then all ~~((6))~~ six-inch dbh or greater trees per acre must be left plus the largest remaining trees to equal ~~((50))~~ fifty trees per acre. Select the additional ~~((50))~~ fifty trees based on the following priority order:

- Trees that provide shade to water;
- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010;
- Trees that are evenly distributed across the inner zone.

(E) To the extent down wood is available on site prior to harvest, at least twelve tons of down wood per acre must be left following harvest as follows:

(I) Six pieces greater than ~~((46))~~ sixteen inches diameter and ~~((20))~~ twenty feet in length; and

(II) Four pieces greater than ~~((6))~~ six inches in diameter and ~~((20))~~ twenty feet in length.

(III) Landowner/operator is not required to create down wood.

(F) See **stream-adjacent parallel roads for all timber habitat types** in (iv) of this subsection if there is a stream-adjacent parallel road in this zone.

(ii) **Mixed conifer timber habitat type.**

(A) The width of the inner zone is ~~((70))~~ seventy feet measured horizontally from the outer edge of the core zone on streams greater than ~~((45))~~ fifteen feet bankfull width or ~~((45))~~ forty-five feet measured horizontally from the outer

edge of the core zone on streams with a bankfull width of ~~((15))~~ fifteen feet or less.

(B) No harvest is allowed in the inner zone except as described in (b)(ii)(C) or (D) of this subsection, and as allowed for stream crossings and yarding corridors as described ~~((above))~~ in this subsection (1).

**(C) Stands with a high basal area:**

(I) Harvest is permitted in the inner zone if the combined conifer and hardwood basal area for trees greater than ~~((6))~~ six inches dbh is:

- Greater than ~~((10))~~ one hundred ten square feet per acre on low site indexes (site index less than ~~((90))~~ ninety); or
- Greater than ~~((130))~~ one hundred thirty square feet per acre on medium site indexes (site index between ~~((90))~~ ninety and ~~((100))~~ one hundred ten); or
- Greater than ~~((150))~~ one hundred fifty square feet per acre on high site indexes (site index greater than ~~((100))~~ one hundred ten).

(II) The harvest must leave at least ~~((50))~~ fifty trees per acre AND a minimum leave tree basal area of at least:

- ~~((70))~~ Seventy square feet per acre on low site indexes; or
- ~~((90))~~ Ninety square feet per acre on medium site indexes; or
- ~~((100))~~ One hundred ten square feet per acre on high site indexes.

(III) The trees to be left shall be selected as follows:

- The ~~((21))~~ twenty-one largest trees per acre must be left; and
- An additional ~~((29))~~ twenty-nine trees per acre that are ~~((10))~~ ten-inch dbh or greater must be left. If there are less than ~~((29-10))~~ twenty-nine ten-inch dbh or greater trees per acre, leave the ~~((29))~~ twenty-nine largest trees. If there are more than ~~((29-10))~~ twenty-nine ten-inch dbh or greater trees per acre, leave ~~((29-10))~~ twenty-nine ten-inch dbh trees per acre based on the following priority order:
  - Trees that provide shade to water;
  - Trees that lean towards the water;
  - Trees of the preferred species, as defined in WAC 222-16-010; or
  - Trees that are evenly distributed across the inner zone.
- If more than ~~((50))~~ fifty trees per acre are needed to meet the minimum leave tree basal area for the site index in (b)(ii)(C)(II) of this subsection, then additional trees greater than ~~((6))~~ six inches dbh must be left. If the minimum basal area cannot be met with fewer than ~~((100))~~ one hundred trees at least ~~((6))~~ six inches dbh, then no more than ~~((100))~~ one hundred trees per acre of the largest remaining trees will be required to be left regardless of the basal area.

**(D) Stands with low basal areas and high density:** Thinning is permitted if the basal area of all species is less than the minimum requirements for the site index in (b)(ii)(C)(II) of this subsection AND there are more than ~~((20))~~ one hundred twenty trees per acre. The thinning must leave a minimum of ~~((120))~~ one hundred twenty trees per acre. The trees to be left shall be selected as follows:

- (I) The ~~((50))~~ fifty largest trees per acre must be left; and
- (II) An additional ~~((70))~~ seventy trees per acre greater than ~~((6))~~ six inches dbh must be left. If there are not ~~((70-6))~~ seventy six-inch dbh or greater trees per acre, then all ~~((6))~~ six-inch dbh or greater trees per acre must be left plus the largest remaining trees to equal ~~((70))~~ seventy trees per acre. Select the additional ~~((70))~~ seventy trees based on the following priority order:
  - Trees that provide shade to water;
  - Trees that lean towards the water;
  - Trees of the preferred species, as defined in WAC 222-16-010; or
  - Trees that are evenly distributed across the inner zone.

six-inch dbh or greater trees per acre must be left plus the largest remaining trees to equal ~~((70))~~ seventy trees per acre. Select the additional ~~((70))~~ seventy trees based on the following priority order:

- Trees that provide shade to water;
  - Trees that lean towards the water;
  - Trees of the preferred species, as defined in WAC 222-16-010; or
  - Trees that are evenly distributed across the inner zone.
- (E) To the extent down wood is available on site prior to harvest, ~~((20))~~ twenty tons of down wood per acre is required to be left following harvest as follows:

(I) ~~((8))~~ Eight pieces greater than ~~((16))~~ sixteen inches diameter and ~~((20))~~ twenty feet in length; and

(II) ~~((8))~~ Eight pieces greater than ~~((6))~~ six inches in diameter and ~~((20))~~ twenty feet in length.

(III) Landowner/operator is not required to create down wood.

**(F) See stream-adjacent parallel roads for all timber habitat types** in (b)(iv) of this subsection if there is a parallel road in this zone.

**(iii) High elevation timber habitat type.**

(A) The width of the inner zone is ~~((45))~~ forty-five feet measured horizontally from the outer edge of the core zone on streams equal to or less than ~~((15))~~ fifteen feet bankfull width or ~~((70))~~ seventy feet measured horizontally from the outer edge of the core zone on streams with a bankfull width of greater than ~~((15))~~ fifteen feet.

(B) Follow stand requirements for western Washington riparian management zones, WAC 222-30-021 (1)(b).

Note: Option 2 is not permitted for eastside use, because of the minimum floor (100') constraint.

(C) To the extent down wood is available prior to harvest, ~~((30))~~ thirty tons per acre of down wood per acre must be left following harvest as follows:

(I) ~~((8))~~ Eight pieces greater than ~~((16))~~ sixteen inches diameter and ~~((20))~~ twenty feet in length; and

(II) ~~((8))~~ Eight pieces greater than ~~((6))~~ six inches in diameter and ~~((20))~~ twenty feet in length.

(III) Landowner/operator is not required to create down wood.

**(D) See stream-adjacent parallel roads for all timber habitat types** in (b)(iv) of this subsection if there is a parallel road in this zone.

**(iv) Stream-adjacent parallel roads for all timber habitat types in the inner zone.** The shade rule, WAC 222-30-040, must be met whether or not the inner zone includes a stream-adjacent parallel road. Where a stream-adjacent parallel road exists in the inner zone and the minimum required basal area cannot be met due to the presence of the road, then the location of the road determines the allowable operations as follows:

(A) For streams with a bankfull width that is greater than ~~((15))~~ fifteen feet:

(I) If the edge of the road closest to the stream is ~~((75))~~ seventy-five feet or more from the outer edge of bankfull width of the stream or outer edge of CMZ, whichever is greater, **no harvest is permitted in the inner zone.** This includes trees within the inner zone on the uphill side of the road.

(II) No harvest is permitted within the inner zone on the streamside of the road. If the edge of the road closest to the stream is less than ~~((75))~~ seventy-five feet from the outer edge of bankfull width of the stream or outer edge of CMZ, whichever is greater then:

- Additional leave trees equal in total basal area to the trees lost due to the road must be left near the streams in or adjacent to the unit to be harvested; (See ~~((the))~~ board manual section 7.)

- Where the additional leave trees providing fish habitat for water quality function are determined to be not available or not practical by the department, landowners and operators will employ site specific management activities to replace lost riparian functions that may include placement of large woody debris in streams. (See ~~((the))~~ board manual section 7.)

(B) For streams with a bankfull width less than ~~((15))~~ fifteen feet:

(I) If the edge of the road closest to the stream is ~~((50))~~ fifty feet or more from the outer edge of bankfull width or outer edge of CMZ, whichever is greater, no harvest is permitted in the inner zone. This includes trees within the inner zone on the uphill side of the road.

(II) No harvest is permitted within the inner zone on the stream side of the road. If the edge of the road closest to the stream is less than ~~((50))~~ fifty feet from the bankfull width or CMZ, whichever is greater then:

- Additional leave trees equal in total basal area to the trees lost due to the road must be left near the streams in or adjacent to the unit to be harvested. (See ~~((the))~~ board manual section 7.)

- Where the additional leave trees providing fish habitat for water quality function are determined to be not available or not practical by the department, landowners and operators will employ site specific management activities to replace lost riparian functions that may include placement of large woody debris in streams. (See ~~((the))~~ board manual section 7.)

(C) **Wildlife reserve trees.** Leave all wildlife reserve trees within the inner zone of the riparian management zone where operations in the vicinity do not violate the safety regulations (chapter 296-54 WAC and chapter ~~((49-17))~~ 49.17 RCW administered by the department of labor and industries, safety division). Live wildlife reserve trees will contribute to the basal area requirements for inner zone leave trees and to leave tree counts if they are among the ~~((21))~~ twenty-one largest trees per acre; or meet the requirement of an additional ~~((29))~~ twenty-nine leave trees per acre as per ~~((above))~~ (b)(ii)(E) of this subsection.

(c) **Outer zones.** This zone has three categories based on timber habitat type: Ponderosa pine, mixed conifer and high elevation. The width of this zone is ~~((0 to 55))~~ zero to fifty-five feet measured horizontally from the outer edge of the inner zone depending on the site class and stream width. (See WAC 222-16-010 definition of "RMZ outer zone.")

(i) Tree counts that must be left per acre, regardless of the presence of an existing stream-adjacent parallel road in the zone, are:

(A) Ponderosa pine habitat type - ~~((10))~~ Ten dominant or codominant trees.

(B) Mixed conifer habitat type - ~~((15))~~ Fifteen dominant or codominant trees.

(C) High elevation habitat type - See requirements for western Washington RMZs in WAC 222-30-021 (1)(c).

(ii) Outer zone leave tree requirements in ~~((section (i) above))~~ (c)(i) of this subsection may be reduced to ~~((5))~~ five trees per acre in the ponderosa pine zone, ~~((8))~~ eight trees per acre in the mixed forest habitat type and ~~((10))~~ ten trees per acre in the high elevation habitat type, if the landowner voluntarily implements a LWD placement plan consistent with board manual sections 5 and 26. Landowners are encouraged to consult with the department and the department of fish and wildlife while designing the plan and prior to submitting a forest practices application. If this strategy is chosen, the approved plan must be included in a complete forest practices application ((must include a copy of the WDFW-approved hydraulics project approval (HPA) permit)).

**\* (2) Eastern Washington protection along Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a ~~((30))~~ thirty-foot wide zone measured horizontally from the outer edge of bankfull width of a Type Np or Ns Water where equipment is limited. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil more than ~~((10%))~~ ten percent of the surface area of the zone:

(A) Ground based equipment;

(B) Skid trails;

(C) Stream crossings (other than existing roads); or

(D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions, especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection ~~((2))~~ reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Type Np Waters.**

Within ~~((50))~~ fifty horizontal feet of the outer edge of bankfull width of the stream, the landowner must identify either a partial cut and/or clearcut strategy for each unit to be harvested:

Once approved by the department, the selected strategy will remain in effect until July 1, 2051. If a landowner transfers title of the harvest unit, the landowner must provide written notice of this continuing obligation to the new owner and send a copy to the department. See WAC 222-20-055.

(i) **For partial cuts:**

(A) Basal areas requirements are the same as those specified for the timber habitat type in the eastern Washington RMZ inner zone.

(B) Where a stream-adjacent parallel road exists, the basal area required in ~~((b)(i)(A))~~ (b)(i)(A) of this subsection is required to be left. (See stream-adjacent parallel roads for Type Np Waters in ~~((below))~~ (c) of this subsection.)

(C) The trees to be included in the basal area determination and left after harvest must include:

(I) The ~~((10))~~ ten largest trees per acre;

(II) Up to an additional ~~((40))~~ forty trees per acre greater than or equal to ~~((40))~~ ten inches dbh must be left. If all or some of the trees are not at least ~~((40))~~ ten inches dbh, then the largest of the remaining trees must be left. Select trees based on the following priority order:

- Provide streambank stability;
- Provide shade to water;
- Lean towards the water;
- Preferred species, as defined in WAC 222-16-010; or
- Evenly distributed; and

If the basal area target has not been met with the trees required above, up to an additional ~~((50))~~ fifty trees are required greater than ~~((6))~~ six inches in dbh based on the above priority order.

(D) Side slope seeps must be protected with a ~~((50))~~ fifty-foot partial cut buffer that meets the basal area and leave tree requirements of ~~(b)(i)(A), (B), and (C) ((above))~~ of this subsection. The buffer shall be measured from the outer perimeter of the perennially saturated soil zone.

(ii) **For clearcuts:**

When the clearcut strategy in this subsection is selected, the landowner must simultaneously designate a ~~((2))~~ two-sided no-harvest ~~((50))~~ fifty-foot buffer along the stream reach in the harvest unit that:

(A) Is equal in total length to the clearcut portion of the stream reach in the harvest unit; and

(B) Meets the upper end of basal area requirements for each respective timber habitat type in the eastern Washington RMZ inner zone. See WAC 222-30-022 (1)(b)(i), (ii) or (iii).

(C) The streamside boundary of all clearcuts must:

(I) Not exceed in total ~~((30%))~~ thirty percent of the length of the stream reach in the harvest unit;

(II) Not exceed ~~((300))~~ three hundred continuous feet in length;

(III) Not be located within ~~((500))~~ five hundred feet of the intersection of a Type S or F Water; and

(IV) Not occur within ~~((50))~~ fifty feet of the following sensitive sites as defined in WAC 222-16-010:

- The outer perimeter of a soil zone perennially saturated from a headwall seep;
- The outer perimeter of a soil zone perennially saturated from a side-slope seep;
- The center of a headwater spring;
- An alluvial fan;
- The center point of intersection of two or more Type Np Waters.

(c) **Stream-adjacent parallel roads for Type Np Waters.** If a road exists in a Type Np RMZ and the basal area required to be left cannot be met within ~~((50))~~ fifty feet of the outer edge of bankfull width of the stream measured horizontally due to the presence of the road, then the distance of the road to the stream determines the allowable operations as follows:

(i) A road that is within ~~((30 to 49))~~ thirty to forty-nine feet measured horizontally from the outer edge of bankfull width of the stream requires:

(A) A total of ~~((100))~~ one hundred feet of riparian management zone measured horizontally (both sides of the stream count towards the total) must be left in a manner to provide maximum functions for nonfish use streams. If har-

vest is taking place on only one side of the stream, then ~~((50))~~ fifty feet of RMZ width must be left, regardless of presence of a stream-adjacent parallel road. The width of the road is not counted as part of the total width of the RMZ.

(B) The location of the riparian management zone required in (A) of this subsection shall be based on the following priority order:

(I) Preferred: The area between the stream and the stream side edge of the road.

(II) The area that provides the most shade to the channel.

(III) The area that is most likely to deliver large woody debris to the channel.

(ii) A road that is within less than ~~((30))~~ thirty feet from the outer edge of bankfull width of the stream measured horizontally requires, in addition to (c)(i)(A) and (B) of this subsection, that all trees between the stream and the streamside edge of the road must be left.

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

**WAC 222-30-050 Felling and bucking. \*(1) Felling along water.**

(a) Except when removing or repositioning large woody debris per WAC 222-30-062, no trees will be felled into or removed from Type S and F Waters RMZ core zones, sensitive sites, or Type A or B Wetlands except trees which cannot practically and safely be felled outside these areas using techniques in general use. Such felling and removing in Type S or F Waters shall comply with the ~~((hydraulic project approval of the department of fish and wildlife))~~ mitigation measures necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat as follows:

(i) Trees shall not be felled into or across the stream except where approved by the department.

(ii) Trees or logs that enter a stream during felling shall remain where they enter unless parts or all of the trees or logs are specifically approved by the department.

(iii) If limbs or other small debris enter the stream as a result of felling, they shall be removed concurrently with each change in yarding road or within seventy-two hours after entry into the stream and placed outside the 100-year flood plain. Limbs or other small debris shall be removed from dry streams prior to the normal onset of high flows. Large woody material which was in place prior to felling shall not be disturbed.

(iv) Precautions shall be taken to minimize the release of sediment to waters downstream from the felling activity. See board manual section 5 for technical guidance.

(b) Within RMZ inner and outer zones, and wetland management zones, fell trees favorable to the lead consistent with safety standards to yard or skid away from the waters. The use of directional felling, lining, jacking and staged felling techniques are required.

(c) Trees may be felled into Type Np Water if logs are removed as soon thereafter as practical. See forest practices board manual section 4 guidelines for clearing slash and debris from Type Np and Ns Water.

**\* (2) Bucking or limbing along water.**

No bucking or limbing shall be done on trees or portions thereof lying within the bankfull width of Type S, F or Np Waters, in the RMZ core zones, in sensitive sites, or in open water areas of Type A Wetlands, except as necessary to remove the timber from the water, or unless it is part of a proposal to remove or reposition large wood debris per WAC 222-30-062. Such bucking or limbing in Type S or F Waters shall comply with the ((hydraulic project approval of the department of fish and wildlife)) mitigation measures in subsection (1)(a) of this section.

**\* (3) Felling near riparian management zones, wetland management zones and setting boundaries.** Reasonable care shall be taken to avoid felling trees into riparian management zones, wetland management zones and areas outside the harvest unit.

**(4) Felling in selective and partial cuts.** Reasonable care shall be taken to fell trees in directions that minimize damage to residual trees.

**(5) Disturbance avoidance for northern spotted owls.** Felling and bucking within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1<sup>st</sup> and August 31<sup>st</sup> provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

**(6) Disturbance avoidance for marbled murrelets.** Felling and bucking shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

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

**WAC 222-30-060 Cable yarding.** **\* (1) Type S and F Waters and sensitive sites.** No timber shall be cable yarded in or across Type S or F Waters except where the logs will not materially damage the bed of waters, banks of sensitive sites, or riparian management zones. If yarding across Type S or F Waters is permitted, then yarding is limited to cable or other aerial logging methods. Any work in or above Type S or F Waters requires ((a hydraulics project approval (HPA))) an approved forest practices application. Logs must be fully suspended above the water unless otherwise allowed in the applicable ((HPA)) forest practices application. Yarding corridors must be no wider or more numerous than necessary to accommodate safe and efficient transport of logs. Generally, yarding corridors should be located no closer to each other than ((150)) one hundred fifty feet (measured edge to edge) and should be no wider than ((30)) thirty feet. Safety is a prime consideration in the location of yarding corridors. Total openings resulting from yarding corridors must not exceed ((20%)) twenty percent of the stream length associ-

ated with the forest practices application. When changing cable locations, care must be taken to move cables around or clear of the riparian vegetation to avoid damage to riparian vegetation.

**\* (2) Type A or B Wetlands.** No timber shall be cable yarded in or across Type A or B Wetlands without ((written approval from the department and may require a hydraulic project approval from the department of fish and wildlife)) an approved forest practices application.

**\* (3) Deadfalls.** Logs which are firmly embedded in the bed or bank of Type S or F Waters shall not be removed or disturbed without ((hydraulic project approval from the department of fish and wildlife)) an approved forest practices application.

**\* (4) Yarding in riparian management zones, sensitive sites, and wetland management zones.** Where timber is yarded from or across a riparian management zone, sensitive site, or wetland management zone reasonable care shall be taken to minimize damage to the vegetation providing shade to the stream or open water areas and to minimize disturbance to understory vegetation, stumps and root systems. Where practical and consistent with good safety practices, logs shall be yarded in the direction in which they lie and away from Type A or B Wetlands or Type S, F or Np Waters until clear of the wetland management zone or riparian management zone.

**(5) Trees or logs that enter a stream during yarding** shall remain where they enter unless parts or all of the trees or logs are specifically authorized to be removed in an approved forest practices application.

**\* (6) Logs transported across Type S, F, or flowing waters** shall be suspended so no portion of the logs or limbs can enter the watercourse or damage the bed and banks.

**\* (7) Yarding corridors or full suspension** shall be required to prevent damage to riparian vegetation.

**\* (8) If limbs or other small debris enter the stream** as a result of yarding of timber, they shall be removed concurrently with each change in yarding road or within seventy-two hours after entry into the stream, and placed outside the 100-year flood plain. Limbs or other small debris shall be removed from dry streams prior to the normal onset of high flows. Large woody material which was in place prior to yarding of timber shall not be disturbed.

**\* (9) Precautions shall be taken to minimize the release of sediment** to waters downstream from the yarding activity. See board manual section 5 for technical guidance.

**(10) Direction of yarding.**

(a) Uphill yarding is preferred.

(b) Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils.

**\* (c)** When yarding parallel to a Type S or F Water channel below the 100-year flood level or within the riparian management zone, reasonable care shall be taken to minimize soil disturbance and to prevent logs from rolling into the stream, lake, pond, or riparian management zone.

**((6)) (11) Disturbance avoidance for northern spotted owls.** The operation of heavy equipment within a SOSEA boundary shall not be allowed within 0.25 mile of a



northern spotted owl site center between March 1<sup>st</sup> and August 31<sup>st</sup> provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

~~((7))~~ **(12) Disturbance avoidance for marbled murrelets.** Yarding or operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

#### NEW SECTION

**WAC 222-30-062 \*Large woody debris removal or repositioning.** Large woody debris removal or repositioning projects shall incorporate mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat. The following shall apply to large woody debris removal or repositioning:

(1) Large woody debris removal from streams shall only be approved where necessary to address safety considerations, or where its removal would not diminish the fish habitat quality of the watercourse. The department may approve the repositioning of large woody debris within the watercourse to protect life and property or as needed to conduct a forest practices hydraulic project. Repositioned large woody material shall be placed or anchored to provide stable, functional fish habitat.

(2) Large woody debris removal shall be conducted by equipment stationed on the bank, bridge, or other approved methods.

(3) Unless otherwise authorized, large woody debris shall be suspended during its removal so no portion of the large woody debris or limbs can damage the bed or banks. Yarding corridors or full suspension shall be required to avoid damage to riparian vegetation. It may be necessary to cut the large woody debris in place, to a size that allows suspension during removal.

(4) Smaller limb and bark debris associated with the large woody material shall be removed and disposed of so as not to reenter the typed water.

(5) Large woody debris embedded in a bank or bed shall be left undisturbed and intact except where authorized for removal.

(6) Large woody debris removal or repositioning shall be accomplished in a manner which minimizes the release of bedload, logs, or debris downstream.

(7) Depressions created in gravel bars shall be filled, smoothed over, and sloped upwards toward the bank on a minimum two percent gradient.

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

#### **WAC 222-30-070 Ground-based logging systems.**

**\* (1) Typed waters and wetlands.**

(a) Ground-based equipment shall not be used in Type S or F Water, except with approval by the department ~~((and with a hydraulic project approval issued by the department of fish and wildlife))~~. Yarding across Type S or F Waters is limited to cable or other aerial logging methods.

(b) Ground-based transport of logs across Type Np and Ns Waters shall minimize the potential for damage to public resources.

(i) Skidding logs and driving ground-based equipment through defined channels with flowing water is not allowed.

(ii) Ground-based transport of logs to landings across any Typed Np or Ns Water shall minimize the potential to damage public resources.

(iii) Whenever skidding across Type Np or Ns Waters, the direction of log movement between stream banks shall be designed to minimize sediment delivery to the stream.

(c) In order to maintain wetland water movement and water quality, and to prevent soil compaction, ground-based logging systems shall not be used in Type A or B wetlands.

(d) Where harvest in wetlands is permitted, ground-based logging systems shall be limited to low impact harvest systems. Ground-based logging systems operating in wetlands shall only be allowed during periods of low soil moisture or frozen soil conditions.

(e) Locations of temporary stream crossings to Np Waters shall be shown on the base map of the forest practices application. Whenever skidding in or across Type Np or Ns Waters, the direction of log movement between stream banks shall be designed to minimize sediment delivery to the stream. BMPs for stream crossings can be found in ~~((the))~~ board manual section ~~((3))~~ 5.

#### **\* (2) Riparian management zone.**

(a) Logging will be permitted within the riparian management zone subject to riparian management zone protection in chapter 222-30 WAC. However, any use of ground-based yarding machines within the zone must be as described in an approved forest practices application or otherwise approved in writing by the department.

(b) When transporting logs in or through the riparian management zone with ground-based equipment, the number of routes through the zone shall be minimized.

(c) Logs shall be transported so as to minimize damage to leave trees and vegetation in the riparian management zone, to the extent practical and consistent with good safety practices.

#### **\* (3) Wetlands management zones.**

(a) Logging will be permitted within wetland management zones subject to restrictions in WAC 222-30-020~~((7))~~ (8).

(b) Where feasible logs shall be skidded with at least one end suspended from the ground so as to minimize soil disturbance and damage to leave trees and vegetation in the wetland management zone.

(c) Ground-based harvesting systems shall not be used within the minimum WMZ width unless described in an approved forest practices application or otherwise approved in writing by the department.

**\* (4) Deadfalls.** Logs firmly embedded in the bed or bank of Type S or F Waters shall not be removed or disturbed

without ((~~hydraulic project~~)) approval from the department ((~~of fish and wildlife~~)).

**\* (5) Moisture conditions.**

(a) Ground-based logging systems shall not be used on exposed erodible soils or saturated soils if sediment delivery is likely to disturb a wetland, stream, lake or pond.

(b) When soil moisture is high and unrestricted operation of ground-based equipment would result in unreasonable soil compaction, operations shall be restricted to methods that minimized widespread soil compaction or, operations postponed until site conditions improve such that yarding may proceed without causing unreasonable soil compaction and the long-term impacts to soil productivity and moisture absorption capacity that can result.

(6) **Protection of residual timber.** Reasonable care shall be taken to minimize damage from skidding to the stems and root systems of residual timber and to young reproduction.

**\* (7) Skid trail location and construction.**

(a) Skid trails shall be kept to the minimum width.

(b) Reasonable care shall be taken to minimize the amount of sidecast required and shall only be permitted above the 100-year flood level.

(c) Skid trails shall be outslodged where practical, but be insloped where necessary to prevent logs from sliding or rolling downhill off the skid trail.

(d) Skid trails running parallel or near parallel to streams shall be located outside the no-harvest zone of all typed waters and at least ((~~30~~)) thirty feet from the outer edge of the bankfull width of the unbuffered portions of Type Np or Ns Water unless approved in writing by the department.

(e) Skid trails shall cross the drainage point of swales at an angle to minimize the potential for delivering sediment to a typed water or where channelization is likely to occur. See board manual section 3.

**\* (8) Skid trail maintenance.**

(a) Upon completion of use and termination of seasonal use, skid trails on slopes in exposed soils shall be water barred where necessary to prevent soil erosion.

(b) Skid trails located within ((~~200~~)) two hundred feet horizontal distance of any typed water that directly delivers to the stream network shall use water bars, grade breaks, and/or slash to minimize sediment delivery to the stream. Water bars shall be placed at a frequency to minimize gully-ing and soil erosion. In addition to water barring, skid trails with exposed soil that is erodible and may be reasonably expected to cause damage to a public resource shall be seeded with a noninvasive plant species (preferably a species native to the state) and adapted for rapid revegetation of disturbed soil, or treated with other erosion control measures acceptable to the department.

**\* (9) Slope restrictions.** Ground-based systems shall not be used on slopes where in the opinion of the department this method of operation would cause actual or potential material damage to a public resource.

(10) **Disturbance avoidance for northern spotted owls.** The operation of heavy equipment within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1<sup>st</sup> and August 31<sup>st</sup>, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(11) **Disturbance avoidance for marbled murrelets.** Operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

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

**WAC 222-30-100 Slash disposal or prescribed burning. (1) Slash disposal or prescribed burning are prohibited in the core zone.**

(2) **Slash disposal techniques:**

**\* (a)** Any conventional method of slash disposal may be used, except in Type A or B Wetlands, wetland management zones, and RMZ core and inner zones, Type Np RMZs, sensitive sites, and on sites where the department determines that a particular method would cause unreasonable risk to leave trees, public resources or site productivity. Conventional methods of slash disposal include the following: Controlled broadcast burning; pile or windrow and burn; pile or windrow without burning; mechanical scatter and compaction; scarification; chip, mulch or lop and scatter; burying; and physical removal from the forest lands: Provided, That on land shown to have low productivity potential the landowner or operator shall obtain the department's approval of its regeneration plan prior to utilizing controlled broadcast burning as a slash disposal technique. In riparian management inner zones, slash disposal shall be by hand, unless approved by the department. Slash disposal methods that employ machine piling, mechanical scatter and/or compaction, scarification or other techniques that result in soil disturbance shall not be allowed in equipment limitation zones. Scarification shall not be allowed within wetlands. Machine piling is not allowed in Type A and B Wetlands. Department approval, through a burning permit, is required for burning within an equipment limitation zone.

(b) All slash burning requires a burning permit from the department which provides for compliance with the smoke management plan and reasonable care to protect Type A and B Wetlands, wetland management zones, riparian management zones, equipment limitation zones, soil, residual timber, public resources, and other property.

(3) **Slash isolation, reduction, or abatement** is required when the department determines there is an extreme fire hazard according to law (see chapter 332-24 WAC).

(4) **Slash disposal** is required where the forest landowner has applied for and been granted an extension of time for reforestation on the grounds that slash disposal is necessary or desirable before reforestation.

**\*(5) Removing slash and debris from streams.**

"Slash" or "debris" which can reasonably be expected to cause significant damage to the public resource shall be removed from Type S, F or Np Waters, to above the 100-year flood level and left in a location or manner minimizing risk of re-entry into the stream, lake or pond and if substantial accumulations of slash exist below the 100-year flood level of Type S, F or Np Waters, slash disposal is required. See ~~((the forest practices))~~ WAC 222-16-025, Fish protection standards for general provisions for all forest practices hydraulic projects, and board manual section 4 for ((<sup>2</sup>))guidelines for clearing slash and debris from Type Np and Ns Waters.((<sup>2</sup>))

**\*(6) Fire trails.**

(a) Construct drainage structures as needed to control erosion.

(b) Reasonable care shall be taken to minimize excavation during fire trail construction and sidecast shall only be permitted above the 100-year flood level.

(c) Fire trails shall not be located within Type A or B Wetlands, wetland management zones, equipment limitation zones or riparian zones without prior written approval of the department. Hand constructed fire trails are preferred within forested wetlands. When machine built fire trails are necessary for control of burning, trail width and excavation shall be minimized.

**(7) Disturbance avoidance for northern spotted owls.**

Burning within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1<sup>st</sup> and August 31<sup>st</sup>, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

**(8) Disturbance avoidance for marbled murrelets.**

Slash disposal or prescribed burning shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

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

**WAC 222-34-040 Site preparation and rehabilitation.** \*(1) Heavy equipment. Heavy equipment shall not be used in connection with site preparation or rehabilitation work:

(a) When, because of soil moisture conditions or the type of soils, undue compaction or unnecessary damage to soil productivity would occur or erosion would result in damage to water quality; or

(b) Within riparian management zones, Type A and B Wetlands, wetland management zones, or within equipment limitation zones of Type Np and Ns Waters on slopes of ~~((30))~~ thirty percent or less. On slopes greater than ~~((30))~~ thirty percent heavy equipment shall not operate within ~~((50))~~

fifty feet of Type S through Ns Waters unless a site specific plan has been approved by the department.

\*(2) Surface water drainage. Where site preparation or rehabilitation involves contouring or terracing of slopes, drainage ditches, or similar work:

(a) The gradient of ditches or other artificial water courses in erodible soils shall not cause significant stream, lake, pond, or wetland siltation.

(b) Ditches and other artificial water courses shall not discharge onto any road, landing or fill.

(c) Ditches and other artificial water courses shall not be constructed to discharge onto the property of other parties without their consent.

\*(3) Stream channel realignment. Where work involves deepening, widening, straightening or relocating the channel; or bulkheading, riprapping or otherwise stabilizing the banks of a Type S or F Water, ~~((a hydraulic project approval is always required, and))~~ the work shall be done only:

(a) In conformance with chapter 220-110 WAC;

~~((b))~~ (b) After consultation with any party having an appropriation permit or registered right to appropriate waters from the affected stream segment in cases of streams used for domestic water supplies((-));

~~((c))~~ (c) Where no significant adverse effects on either the peak or minimum water levels or flows downstream can be expected((-); and

~~((d))~~ (d) In a manner not expected to result in long-term damage to public resources or to adjacent or downstream property.

(NOTE: OTHER LAWS AND RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

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

**WAC 222-50-020 Other agency requirements.** (1)

Many other laws and rules apply to the conduct of forest practices. Other agencies administer some of these other regulatory programs. Permits may be required by such agencies prior to the conduct of certain forest practices. The ~~((department will))~~ governor's office of regulatory assistance maintains a list ~~((for distribution))~~ of state, regional, and local regulatory programs including those that apply to forest practices operations. Affected parties are urged to consult with the specified agencies and independent experts with respect to the regulatory requirements shown on the list.

~~\*(2) ((Hydraulics project approval law, chapter 77.55 RCW. A hydraulics project approval must be obtained from the department of fish and wildlife prior to constructing any form of hydraulic project or other work that will use, divert, obstruct, or change the natural flow or bed of any river or stream or that will utilize any of the waters of the state or materials from the stream beds. See chapter 77.55 RCW and WAC 222-14-010.~~

~~\*(3))~~ **Compliance with the Shoreline Management Act**, chapter 90.58 RCW, is required. The Shoreline Management Act is implemented by the department of ecology and the applicable local governmental entity. A substantial development permit must be obtained prior to conducting forest practices which are "substantial developments" within the

"shoreline" area as those terms are defined by the Shoreline Management Act.

~~((4))~~ (3) Wildlife protection, Title 77 RCW. Nothing in these rules is intended to interfere with any authority of the department of fish and wildlife to protect wildlife under any other statutes or regulations, or under any agreements with landowners.

~~((5))~~ (4) Federal Endangered Species Act, 16 U.S.C. 1531 et seq., and other federal laws. The federal Endangered Species Act and other federal laws may impose certain obligations on persons conducting forest practices. Compliance with the Forest Practices Act or these rules does not ensure compliance with the Endangered Species Act or other federal laws.

### WSR 13-11-141

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed May 22, 2013, 9:31 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-092.

Title of Rule and Other Identifying Information: WAC 182-500-0020 Medical assistance definitions—C, 182-500-0030 Medical assistance definitions—E, 182-503-0001 Insurance affordability programs—Overview, 182-503-0005 Washington apple health (WAH)—How to apply, 182-503-0010 WAH—Who can apply, 182-503-0060 WAH—Application processing times, 182-503-0070 WAH—When coverage begins, 182-503-0080 WAH—Application denials and withdrawals, 182-503-0505 WAH—General eligibility requirements, 182-503-0515 WAH—Social security number requirements, 182-503-0520 WAH—Residency requirements for noninstitutionalized medical programs, 182-503-0525 WAH—Residency requirements for an institutionalized individual, 182-503-0535 WAH—Citizenship and alien status, 182-503-0540 WAH—Assignment of rights and cooperation, 182-503-0565 WAH—Age requirements for medical programs based on MAGI, 182-504-0015 WAH—Certification periods for CN programs, 182-504-0035 WAH—Renewals, 182-504-0105 WAH—Changes that must be reported, 182-504-0110 WAH—When to report changes, 182-504-0120 WAH—Effective dates of changes, 182-504-0125 WAH—Effect of changes, 182-505-0100 WAH—Monthly income standards based on the FPL, 182-505-0115 WAH—Eligibility for pregnant women, 182-505-0210 WAH—Eligibility for children, 182-505-0211 WAH—Foster care, 182-505-0220 Definitions for premium-based health care coverage under programs included in apple health for kids, 182-505-0225 WAH—Premium-based children's program—Purpose and scope, 182-505-0230 Waiting period for premium-based health care coverage, 182-505-0235 WAH—Premium-based children's program—Order of payments, 182-505-0237 WAH—Premium-based children's program—Other rules that apply, 182-505-0240 WAH—Parents and caretaker relatives, 182-505-0245 Income and resources stan-

dards for family medical programs, 182-505-0250 WAH—MAGI-based adult medical, 182-505-0515 Medical coverage resulting from a cash grant, 182-518-0005 WAH—Notice requirements—General, 182-518-0010 WAH—Notice requirements—Approval and denial notices, 182-518-0015 WAH—Notice requirements—Verification requests, 182-518-0020 WAH—Notice requirements—Renewals, 182-518-0025 WAH—Notice requirements—Changes in and terminations of coverage, and 182-518-0030 WAH—Notice requirements—Electronic notices.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on June 25, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 26, 2013.

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](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on June 25, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 17, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates the HCA as the single state agency responsible for the administration and supervision of Washington's medicaid program (WAH).

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 1344 [725-1344]; Implementation and Enforcement: Catherine Fisher, P.O. Box 45534, Olympia, WA 98504-5534, (360) 1357 [725-1357].

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules

unless requested by the joint administrative rules review committee or applied voluntarily.

May 22, 2013  
Kevin M. Sullivan  
Rules Coordinator

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

**WAC 182-500-0020 Medical assistance definitions—**

**C. "Caretaker relative"** means a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care, and who is one of the following:

(1) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(2) The spouse of such parent or relative (including same sex marriage or domestic partner), even after the marriage is terminated by death or divorce.

(3) Other relatives including relatives of half-blood, first cousins once removed, persons of earlier generations (as shown by the prefixes of great, great-great, or great-great-great), and natural parents whose parental rights were terminated by a court order.

"Carrier" means an organization that contracts with the federal government to process claims under medicare Part B.

"Categorically needy (CN) or categorically needy program (CNP)" is the state and federally funded health care program established under Title XIX of the Social Security Act for persons within medicaid-eligible categories, whose income and/or resources are at or below set standards.

"Categorically needy income level (CNIL)" is the standard used by the agency to determine eligibility under a categorically needy program.

"Categorically needy (CN) scope of care" is the range of health care services included within the scope of service categories described in WAC ((388-501-0060)) 182-501-0060 available to individuals eligible to receive benefits under a CN program. Some state-funded health care programs provide CN scope of care.

"Centers for Medicare and Medicaid Services (CMS)" means the agency within the federal department of health and human services (DHHS) with oversight responsibility for the medicare and medicaid programs.

"Children's health program or children's health care programs" See "Apple health for kids."

"Community spouse," See "spouse" in WAC ((388-500-0100)) 182-500-0100.

"Cost-sharing" means any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for nonnetwork providers, and spending for noncovered services.

"Cost-sharing reductions" means reductions in cost-sharing for an eligible individual enrolled in a silver level plan in the health benefit exchange or for an individual who is an American Indian or Alaska native enrolled in a qualified health plan (QHP) in the exchange.

"Couple," See "spouse" in WAC ((388-500-0100)) 182-500-0100.

"Covered service" is a health care service contained within a "service category" that is included in a medical assistance benefits package described in WAC ((388-501-0060)) 182-501-0060. For conditions of payment, see WAC ((388-501-0050)) 182-501-0050(5). A noncovered service is a specific health care service (for example, cosmetic surgery), contained within a service category that is included in a medical assistance benefits package, for which the agency or the agency's designee requires an approved exception to rule (ETR) (see WAC ((388-501-0160)) 182-501-0160). A noncovered service is not an excluded service (see WAC ((388-501-0060)) 182-501-0060).

"Creditable coverage" means most types of public and private health coverage, except Indian health services, that provide access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under premium-based programs included in Washington apple health (WAH). Creditable coverage is described in 42 U.S.C. 300gg-3 (c)(1).

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

**WAC 182-500-0030 Medical assistance definitions—**

**E. "Early and periodic screening, diagnosis and treatment (EPSDT)"** is a comprehensive child health program that entitles infants, children, and youth to preventive care and treatment services. EPSDT is available to persons twenty years of age and younger who are eligible for any agency health care program. Access and services for EPSDT are governed by federal rules at 42 C.F.R., Part 441, Subpart B. See also chapter ((388-534)) 182-534 WAC.

"Emergency medical condition" means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (1) Placing the patient's health in serious jeopardy;
- (2) Serious impairment to bodily functions; or
- (3) Serious dysfunction of any bodily organ or part.

"Emergency medical expense requirement (EMER)," See WAC 388-865-0217(3).

"Employer-sponsored dependent coverage" means creditable health coverage for dependents offered by a family member's employer or union, for which the employer or union may contribute in whole or in part towards the premium. Extensions of such coverage (e.g., COBRA extensions) also qualify as employer-sponsored dependent coverage as long as there remains a contribution toward the premiums by the employer or union.

"Evidence-based medicine (EBM)" means the application of a set of principles and a method for the review of well-designed studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a health care service is safe, effective, and beneficial when making:

(1) Population-based health care coverage policies (WAC ((388-501-0055)) 182-501-0055 describes how the agency or ((the agency's)) its designee determines coverage of services for its health care programs by using evidence and criteria based on health technology assessments); and

(2) Individual medical necessity decisions (WAC ((388-501-0165)) 182-501-0165 describes how the agency or ((the agency's)) its designee uses the best evidence available to determine if a service is medically necessary as defined in WAC ((388-500-0030)) 182-500-0030).

**"Exception to rule."** See WAC ((388-501-0160)) 182-501-0160 for exceptions to noncovered health care services, supplies, and equipment. See WAC 182-503-0090 for exceptions to program eligibility.

**"Expedited prior authorization (EPA)"** means the process for obtaining authorization for selected health care services in which providers use a set of numeric codes to indicate to the agency or the agency's designee which acceptable indications, conditions, or agency or agency's designee-defined criteria are applicable to a particular request for authorization. EPA is a form of "prior authorization."

**"Extended care services"** means nursing and rehabilitative care in a skilled nursing facility provided to a recently hospitalized medicare patient.

#### NEW SECTION

**WAC 182-503-0001 Insurance affordability programs—Overview.** (1) A person may apply for all of the insurance affordability programs offered through the health care authority (HCA) or the Washington Healthplanfinder (as defined in WAC 182-500-0015):

(a) Washington apple health (WAH) programs (defined in WAC 182-500-0120). WAH includes medicaid programs (defined in WAC 182-500-0070), the children's health insurance program (CHIP) (defined in WAC 182-500-0020), and state-only funded health care programs. These programs are provided free or at low cost on a sliding scale to eligible persons based on their income. WAH program regulations for the application process and eligibility determination are found in chapters 182-503 through 182-527 WAC.

(b) Health insurance premium tax credits (defined in WAC 182-500-0045). This federal refundable tax credit partially offsets the cost of monthly premiums for qualified health plan (QHP) (defined in WAC 182-500-0090) insurance that an eligible person purchases through the Washington Healthplanfinder. These advance payments are reconciled annually by the Internal Revenue Service (IRS) at the time the person files his or her federal tax return.

(c) Cost-sharing reductions. Cost-sharing reductions (defined in WAC 182-500-0020) are available to eligible persons enrolled in a silver-level QHP and to American Indians/Alaska natives enrolled in any QHP.

(2) A person may also apply for and enroll in unsubsidized insurance with a QHP. This unsubsidized insurance is not an insurance affordability program.

(3) Persons choose whether or not to apply for insurance affordability programs. All persons who apply for an insurance affordability program are treated as an applicant for WAH coverage and receive an approval or denial of WAH.

Applicants who are denied are reviewed for other insurance affordability programs.

#### NEW SECTION

**WAC 182-503-0005 Washington apple health—How to apply.** (1) You may apply for Washington apple health (WAH) by giving us (the medicaid agency or its designee) an application:

- (a) Online;
- (b) By calling the Healthplanfinder customer support center number;
- (c) By mail;
- (d) By fax; or
- (e) At a local department of social and health services (DSHS) office.

(2) You may need to complete a supplemental form for WAH if you are:

- (a) Age sixty-five or older;
- (b) On medicare;
- (c) Applying for healthcare based on blindness or disability; or
- (d) Applying for long-term care services.

(3) If you need help filing an application, you can:

- (a) Contact the Healthplanfinder customer support center number listed on the application form;
- (b) Contact an application assistor, certified application counselor or navigator; or
- (c) Have an authorized representative apply on your behalf as described in WAC 182-503-0010.

(4) We will help you with the application or renewal process according to the equal access provisions described in WAC 182-503-0120 and the limited-English proficient provisions described in WAC 182-503-0110.

#### NEW SECTION

**WAC 182-503-0010 Washington apple health—Who can apply.** (1) You may apply for Washington apple health (WAH) for yourself.

(2) You can apply for WAH for another person if you are:

- (a) A legal guardian;
- (b) An authorized representative;
- (c) A parent or caretaker relative of a child less than nineteen years of age;
- (d) A tax filer applying for a tax dependent less than nineteen years of age;
- (e) A spouse; or
- (f) A person applying for someone who is unable to apply on their own due to a medical condition and who is in need of long-term care services.

(3) If you reside in one of the following public institutions, you may turn in an application up to forty-five days before you are released:

- (a) Washington state department of corrections;
  - (b) City or county jails; or
  - (c) An institution for mental disease (IMD).
- (4) You are automatically enrolled in WAH and do not need to turn in an application if you are a:

- (a) Supplemental security income (SSI) recipient;

(b) Person deemed to be an SSI recipient under 1619(b) of the SSA;

(c) Newborn as described in WAC 182-505-0210; or

(d) Child in foster care placement as described in WAC 182-505-0211.

(5) You are the primary applicant on an application if you complete and sign the application on behalf of your household.

(6) If you are an SSI recipient, then you must turn in a signed application when applying for long-term care services per WAC 182-513-1315.

#### NEW SECTION

**WAC 182-503-0060 Washington apple health (WAH)—Application processing times.** (1) We (the agency or its designee) process applications for Washington apple health (WAH) within forty-five calendar days, except when you are:

(a) Pregnant. We process these applications within fifteen calendar days; or

(b) Applying for a program that requires a disability decision. We process these applications within sixty calendar days.

(2) For calculating time limits, "day one" is the day we get a completed application from you, including at least your name, address, and signature.

(3) If we need more information to decide if you can get WAH benefits, you will be given:

(a) A letter asking for the additional information within twenty calendar days of your initial application; and

(b) At least ten calendar days to provide the requested information.

(4) Good cause for a delay in processing the application exists when we acted as promptly as possible but:

(a) The delay was the result of an emergency beyond our control;

(b) The delay was the result of needing more information or documents that could not be readily obtained;

(c) You did not give us the information within the time frame specified in subsection (1) of this section.

(5) Good cause for a delay in processing the application does NOT exist when:

(a) We caused the delay in processing by:

(i) Failing to ask you for information timely; or

(ii) Failing to act on requested information when you provided it timely; or

(b) We did not document the good cause reason when processing the application outside of the time frames specified in subsection (1) of this section.

#### NEW SECTION

**WAC 182-503-0070 Washington apple health (WAH)—When coverage begins.** (1) Your Washington apple health (WAH) coverage starts on the first day of the month you applied for and we (the agency) decided you are eligible to receive coverage, unless one of the exceptions in subsection (4) of this section applies to you.

(2) Sometimes we can start your coverage up to three months before the month you applied (see WAC 182-504-0005).

(3) If you are confined or incarcerated as described in WAC 182-503-0010, your coverage cannot start before the day you are discharged, except when:

(a) You are hospitalized during your confinement; and

(b) The hospital requires you to stay overnight.

(4) Your WAH coverage may not begin on the first day of the month if:

(a) Subsection (3) of this section applies to you. In that case, your coverage would start on the first day of your hospital stay;

(b) You must meet a medically needy spenddown liability (see WAC 182-519-0110). In that case, your coverage would start on the day your spenddown is met; or

(c) You are eligible under the WAH alien emergency medical program (see WAC 182-507-0115). In that case, your coverage would start on the day your emergent hospital stay begins.

#### NEW SECTION

**WAC 182-503-0080 Washington apple health—Application denials and withdrawals.** (1) We (the agency or its designee) follow the rules about notices and letters in chapter 182-518 WAC. We follow the rules about timelines in WAC 182-503-0060.

(2) We deny your application for Washington apple health (WAH) coverage when:

(a) You tell us either verbally or in writing to withdraw your request for coverage;

(b) You do not give us the information we ask for within the time frames stated in WAC 182-503-0060, including any extra time we allow based on your request, to accommodate a disability, or limited-English proficiency, and we need the information to decide whether you can receive coverage;

(c) The information you provide shows you are not eligible.

(3) We send you a written notice explaining why we denied your application (per chapter 182-518 WAC).

(4) We reconsider our decision to deny your WAH coverage without a new application from you when you:

(a) Give us the information we need to decide if you are eligible within thirty days of the date on the denial notice; or

(b) Request a hearing within ninety days of the date on the denial letter and an administrative law judge (ALJ) decides our denial was wrong (per chapter 182-526 WAC).

(5) If you disagree with our decision, you can ask for a hearing. If we denied your application because we don't have enough information, the ALJ will consider the information we already have and anymore information you give us. The ALJ does not consider the previous absence of information or failure to respond in determining if you are eligible.

#### NEW SECTION

**WAC 182-503-0515 Washington apple health—Social Security number requirements.** (1) To be eligible for Washington apple health (WAH), you must provide your valid Social Security number (SSN) or proof of application

for an SSN, except as provided in subsections (5) and (6) of this section.

(2) If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:

(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and

(b) The SSN when you receive it.

(3) Your WAH coverage will not be delayed, denied or terminated while waiting for SSA to send you your SSN.

(4) If you do not provide your SSN, then you will not receive WAH coverage except if you:

(a) Refused to apply for or provide your SSN for religious reasons;

(b) Claim good cause for not providing your SSN because of domestic violence;

(c) Have a newborn as described in WAC 182-505-0210(1). A newborn is eligible for WAH coverage until the baby's first birthday.

(5) There is no SSN requirement for the following:

(a) WAH refugee medical;

(b) WAH alien emergency medical;

(c) WAH programs for children and pregnant women who do not meet citizenship criteria described in WAC 182-503-0535;

(d) A household member who is not applying for WAH coverage.

(6) If you are a "qualified" or "nonqualified" alien as defined in WAC 182-503-0530 who is not authorized to work in the U.S., you do not have to apply for a nonwork SSN.

#### NEW SECTION

#### **WAC 182-503-0525 Washington apple health—Residency requirements for an institutionalized individual.**

(1) An institutionalized individual is a person who resides in an institution as defined in WAC 182-500-0050. The term "individual" used in this section means an "institutionalized individual" unless otherwise indicated. It does not include individuals who receive services under a home and community-based waiver program. When a state is making a placement for an individual in another state, the term institution also includes foster care homes, licensed as described in 45 C.F.R. 1355.20.

(2) The agency must determine whether an individual is capable of indicating their intent to reside in Washington state when deciding whether that individual is a resident of the state. The agency determines that individuals who meet the following criteria are deemed incapable of indicating intent to reside in the state:

(a) The individual is judged legally incompetent by a court of law;

(b) A physician, psychologist or licensed medical professional in the field of intellectual disabilities has determined that the individual is incapable of indicating intent; or

(c) The individual is incapable of declaring intent due to a documented medical condition.

(3) When an individual is placed in an out-of-state institution by the agency, its designee or by a department of social and health services-contracted agency, the state arranging the

placement is considered the individual's state of residence, unless the individual is capable of expressing intent and:

(a) Indicates a desire to change his or her state of residence; or

(b) Asks the current state of residence for help in relocating. This may include assistance in locating an institutional placement in the new state of residence.

(4) If another state has not authorized the placement in the institution, as described in subsection (3) of this section, the agency or its designee uses one of the following criteria to determine the state of residence for an individual who is age twenty or younger:

(a) The state of residence is the state where the parent or legal guardian is a resident at the time of the placement in the institution. To determine a parent's or legal guardian's place of residence, follow rules described in WAC 182-503-0520 for a noninstitutionalized individual.

(b) The state of residence is the state where the parent or legal guardian currently is a resident if the individual resides in an institution in that state.

(c) If the parents of the individual are separated and live in different states, the state of residence is that of the parent filing the application.

(d) If the parental rights are terminated and the individual has a legal guardian, the state of residence is where the legal guardian is a resident.

(e) If the individual has both a guardian of the estate and a guardian of the person, the state of residence is where the guardian of the person is a resident, unless the state has laws which delegate guardianship to a state official or agency for individuals who are admitted to state institutions. In that case, the state of residence for the individual is the state where the institution is located (unless another state has authorized the placement).

(f) If the individual has been abandoned by the parents or legal guardian, and an application is filed on their behalf by another party, the state of residence is the state where the individual is institutionalized. The term abandoned also includes situations where the parents or legal guardian are deceased.

(5) An individual age twenty-one or older that is capable of indicating intent is considered a resident of the state where he or she is living and intends to reside.

(6) An individual age twenty-one or older who became incapable of indicating intent at age twenty-one or older is considered a resident of the state where the individual is physically residing, unless the individual has been placed in the institution by another state.

(7) An individual age twenty-one or older who became incapable of indicating intent before the age of twenty-one is considered a resident of the state where the parents or legal guardian were residents at the time of the placement in the institution.

(8) If a noninstitutionalized individual moves directly from another state to an institution in Washington state, it is not necessary for the individual to establish residency in Washington state prior to entering the facility. The person is considered a resident if he or she intends to reside in the state unless the placement was made by the other state.



(9) An individual of any age who receives a state supplemental payment (SSP) is considered a resident of the state that is making the payment.

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

#### NEW SECTION

**WAC 182-503-0535 Washington apple health—Citizenship and alien status.** (1) To receive Washington apple health (WAH) coverage, you must meet all other eligibility requirements and be one of the following as defined in WAC 182-503-0530:

- (a) A United States (U.S.) citizen;
- (b) A U.S. national;
- (c) A qualified alien; or
- (d) A nonqualified alien and you are a:
  - (i) Pregnant woman;
  - (ii) Child under age nineteen; or
  - (iii) Child under age twenty-one who resides in an institution.

(2) If you are a nonqualified alien approved under deferred action childhood arrivals (DACA), then you are not eligible for WAH under subsection (1)(d) of this section. However, you may qualify under subsection (6) of this section.

(3) If you are a qualified alien as defined in WAC 182-503-0530, you may receive WAH for nonpregnant adults if you:

- (a) Physically entered the U.S. before August 22, 1996;
  - (b) Have continuously resided in the U.S. before becoming a qualified alien; and
  - (c) Are not subject to the five-year bar.
- (4) If you physically entered the U.S. on or after August 22, 1996, you are subject to the five-year bar for WAH for nonpregnant adults, unless you meet one of the exemptions in subsection (5) of this section. The five-year bar starts on the day you obtain qualified status.

(5) You are exempt from the five-year bar if you are one of the following qualified aliens as defined in WAC 182-503-0530:

- (a) Amerasian lawful permanent residents;
- (b) Asylees;
- (c) Cuban/Haitian entrants;
- (d) Persons granted withholding of deportation or removal;
- (e) Refugees;
- (f) Special immigrants from Iraq and Afghanistan;
- (g) Victims of trafficking who have been certified or had their eligibility approved by the Office of Refugee Resettlement (ORR); and
- (h) Lawful permanent residents, parolees, or battered aliens, who are also an armed services member or veteran as described below:
  - (i) On active duty in the U.S. military, other than active duty for training;
  - (ii) An honorably discharged U.S. veteran;
  - (iii) A veteran of the military forces of the Philippines who served prior to July 1st, 1946, as described in Title 38, Section 107 of the U.S. Code; or

(iv) The spouse, unremarried widow or widower, or unmarried dependent child of a veteran or active duty service member.

(6) If you are ineligible for WAH because of the five-year bar or because of your immigration status, including if you are approved under DACA, you may be eligible for:

- (a) The WAH alien emergency medical program as described in WAC 182-507-0110 through 182-507-0125;
- (b) WAH pregnancy medical for noncitizen women as described in WAC 182-505-0115;
- (c) State-funded WAH for kids as described in WAC 182-505-0210; or
- (d) The medical care services (MCS) program as described in chapter 182-508 WAC.

#### NEW SECTION

**WAC 182-503-0565 Washington apple health—Age requirements for medical programs based on modified adjusted gross income (MAGI).** The following age requirements apply to individuals whose eligibility for Washington apple health (WAH) is based on modified adjusted gross income (MAGI) methodology per WAC 182-509-0305.

(1) You must be age sixty-four or younger to be eligible for WAH MAGI-based adult coverage as described in WAC 182-505-0250.

(2) Your household must include an eligible dependent child age seventeen or younger to be eligible for WAH parent or caretaker relative coverage as described in WAC 182-505-0240. The child must be related to you in one of the ways described in WAC 182-500-0020 to be considered an eligible dependent child.

(3) A child must be age eighteen or younger to be eligible for WAH for kids as described in WAC 182-505-0210 with the following exceptions:

- (a) An institutionalized child may still qualify under a children's health care program through the age of twenty-one (see WAC 182-514-0230);
- (b) A foster care child may qualify for WAH foster care coverage through the age of twenty-six (see WAC 182-505-0211).

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-503-0505 Washington apple health—General eligibility requirements ((for medical programs)).** (1) ((Persons)) Individuals applying for ((benefits under the medical coverage)) Washington apple health (WAH) programs established under chapter 74.09 RCW must meet the eligibility criteria ((established by the department)) in chapters ((388-400)) 182-500 through ((388-555)) 182-527 WAC.

(2) ((Persons)) Individuals applying for ((medical coverage)) WAH are considered first for federally funded or federally matched programs. State-funded programs are considered after the individual is determined ineligible for federally funded and federally matched programs ((are not available to the client except for brief periods when the state-funded programs offer a broad scope of care which meet a specific client need)).

(3) Unless otherwise specified in program specific WAC, the eligibility criteria for each ~~((medical))~~ WAH program is as follows:

(a) Verification of age and identity ~~((chapters 388-404, 388-406, and 388-490))~~ WAC 182-503-0050; ~~((and))~~

(b) Residence in Washington state ~~((chapter 388-468))~~ WAC 182-503-0520 and 182-503-0525; ~~((and))~~

(c) Citizenship or immigration status in the United States ~~((chapter 388-424))~~ WAC 182-503-0535; ~~((and))~~

(d) Possession of a valid Social Security account number ~~((chapter 388-476))~~ WAC 182-503-0515; ~~((and))~~

(e) Assignment of medical support rights to the state of Washington (WAC ~~((388-505-0540))~~ 182-503-0540); ~~((and))~~

(f) ~~((Cooperation in securing medical support (chapter 388-422 WAC); and~~

~~((g))~~ Application for medicare and enrollment into medicare's prescription drug program if:

(i) It is likely that the individual is entitled to medicare; and

(ii) The state has authority to pay medicare cost sharing as described in chapter ~~((388-517))~~ 182-517 WAC.

~~((h))~~ (g) For individuals whose eligibility is not on the basis of modified adjusted gross income (MAGI) methodology, countable resources must be within specific program limits (chapters ~~((388-470 and 388-478))~~ 182-512, 182-513, 182-515, 182-517, and 182-519 WAC); and

~~((i))~~ (h) Countable income within program limits ~~((chapters 388-450 and 388-478 WAC-))~~;

(i) For MAGI-based WAH programs, see WAC 182-505-0100;

(ii) For the WAH refugee program, see WAC 182-507-0110;

(iii) For the WAH medical care services program, see WAC 182-508-0230;

(iv) For WAH for workers with disabilities (HWD), see WAC 182-511-0060;

(v) For the WAH SSI-related program, see WAC 182-512-0010;

(vi) For WAH long-term care programs, see WAC 182-513-1300 and 182-515-1500;

(vii) For WAH medicare savings programs, see WAC 182-517-0100; and

(viii) For the WAH medically needy program, see WAC 182-519-0050.

(4) In addition to the general eligibility requirements in subsection (3) of this section, each program has specific eligibility requirements as described in applicable WAC.

(5) ~~((Persons living))~~ Individuals in a public institution, including a correctional facility, are not eligible for ~~((the department's medical coverage))~~ WAH programs ~~((For a person)),~~ except in the following situations:

(a) The individual is under age twenty or over age sixty-five ~~((who))~~ and is a patient in an institution for mental disease (see WAC ~~((388-513-1315(13) for exeption-))~~ 182-513-1315(13)); or

(b) The individual receives inpatient hospital services outside of the public institution or correctional facility.

(6) ~~((Persons))~~ Individuals terminated from SSI or ~~((TANF cash grants and those))~~ who lose eligibility for cate-

gorically needy (CN) ~~((medical))~~ coverage have their CN coverage continued while their eligibility for other ~~((medi-eal))~~ health care programs is redetermined. ~~((This continua-tion of medical coverage is described in chapter 388-434 WAC))~~ See WAC 182-504-0125.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

**WAC 182-503-0520 Washington apple health—Res-idency requirements** ~~((for medical care services (MCS)))~~ **—Individuals who are not residing in an institu-tion.** ~~((This section applies to medical care services (MCS-))~~

(1) A resident is an individual who ~~((:~~

~~((a))~~ currently lives in Washington and;

~~((a))~~ Intends to ~~((continue living here permanently or for an indefinite period of time))~~ reside here, including individu-als without a fixed address; or

(b) Entered the state looking for a job; or

(c) Entered the state with a job commitment.

(2) An individual does not need to live in the state for a specific period of time prior to ~~((be))~~ meeting the require-ments in subsection (1) of this section before being consid-ered a resident.

(3) ~~((An individual receiving MCS))~~ A child under age eighteen is a resident of the state where the child's primary custodian lives.

(4) A resident applying for or receiving health care ben-efits can temporarily be out of the state for more than one month ~~((If so, the individual must provide the agency or the agency's designee with adequate information to demonstate the intent to continue to reside in the state of Washington.~~

~~((4))~~ An individual may not receive comparable benefits from another state for the MCS program.

(5) A former resident of the state can apply for MCS while living in another state if:

(a) The individual:

(i) Plans to return to this state;

(ii) Intends to maintain a residence in this state; and

(iii) Lives in the United States at the time of the applica-tion.

(b) In addition to the conditions in (a)(i), (ii), and (iii) of this subsection being met, the absence must be:

(i) Enforced and beyond the individual's control; or

(ii) Essential to the individual's welfare and is due to physical or social needs.

(c) See WAC 388-406-0035, 388-406-0040, and 388-406-0045 for time limits on processing applications.

(6) Residency is not a requirement for detoxification ser-vices.

(7) An individual is not a resident when the individual enters Washington state only for medical care. This individ-ual is not eligible for any medical program. The only excep-tion is described in subsection (8) of this section.

(8) It is not necessary for an individual moving from another state directly to a nursing facility in Washington state to establish residency before entering the facility. The indi-vidual is considered a resident if they intend to remain perma-nently or for an indefinite period unless placed in the nursing facility by another state.

(9) An individual's residence is the state:

(a) Where the parent or legal guardian resides, if appointed, for an institutionalized individual twenty-one years of age or older, who became incapable of determining residential intent before reaching age twenty-one;

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

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

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

(10) In a dispute between states as to which is an individual's state of residence, the state of residence is the state in which the individual is physically located, without their health care benefits being denied or terminated, if the individual:

(a) Provides the agency or its designee with adequate information to determine that the individual intends to return to the state once the purpose of his or her absence has been accomplished; and

(b) Has not been determined eligible for medicaid or state-funded health care benefits in another state.

(5) An individual who enters Washington state only for health care is not a resident and is not eligible for any medical program. The only exception is for an individual who moves from another state directly into an institution in Washington state. Residency rules for institutionalized individuals are described in WAC 182-503-0525.

(6) An individual of any age who receives a state supplemental payment (SSP) is considered a resident of the state that is making the payment.

(7) An individual who receives federal payments for foster or adoption assistance is considered a resident of the state where the person physically resides even if:

(a) The individual does not live in the state that is making the foster or adoption assistance payment; or

(b) The individual does not live in the state where the adoption agreement was entered.

(8) In a dispute between states, the state of residence is the state in which the individual is physically located.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-503-0540 Assignment of rights and cooperation.** (1) When ~~((a person))~~ you become ~~((s))~~ eligible for any of the ~~((department's medical))~~ agency's health care programs, ~~((they make assignment of))~~ you assign certain rights to the state of Washington. ~~((This assignment includes))~~ You assign all rights to any type of coverage or payment for ~~((medical))~~ health care ~~((which results))~~ that comes from:

(a) A court order;

(b) An administrative agency order; or

(c) Any third-party benefits or payment obligations for medical care which are the result of **subrogation** or contract (see WAC 388-501-0100).

(2) ~~((Subrogation is a legal term which describes the method by which the state acquires the rights of a client for whom or to whom the state has paid benefits. The subroga-~~

~~tion rights of the state are limited to the recovery of its own costs.~~

~~((3) The person who))~~ When you sign ~~((s))~~ the application ~~((makes the assignment of))~~ you assign the rights described in subsection (1) of this section to the state ~~((Assignment is made on their own behalf and on behalf of any eligible person for whom they can legally make such assignment.~~

~~((4) A person))~~ for:

~~((a) Yourself; and~~

~~((b) Any eligible person for whom you can legally make such assignment.~~

~~((3) You must cooperate with ((the department)) us (the agency) in ((the identification, use or collection of)) identifying, using or collecting third-party benefits. ((Failure to)) If you do not cooperate ((results in a termination of eligibility for the responsible person. Other obligations for cooperation are located in chapters 388-14A and 388-422 WAC. The following clients are exempt from termination of eligibility for medical coverage as a result of noncooperation:~~

~~((a) A pregnant woman; and~~

~~((b) Minor children; and~~

~~((c) A person who has been determined to have "good cause" for noncooperation (see WAC 388-422-0015)), your health care benefits may end.~~

~~((5) A person will not lose eligibility for medical assistance programs))~~ (4) Your WAH coverage will not end due solely to the noncooperation of any third party.

~~((6) A person))~~ (5) You will ~~((be responsible for the costs of otherwise covered medical))~~ have to pay for your health care services if you:

(a) ~~((The person))~~ Received and kept the third-party payment for those services; or

(b) ~~((The person))~~ Refused to ~~((provide))~~ give to the provider of care ~~((their))~~ your legal signature on insurance forms.

(6) The state is limited to the recovery of its own costs for health care costs paid on behalf of a recipient of health care coverage. The legal term which describes the method by which the state acquires the rights of a person for whom the state has paid costs is called **subrogation**.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

**WAC 182-504-0015 Washington apple health—Certification periods for categorically needy ~~((CN) scope of care medical assistance))~~ programs.** (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) ~~((scope of care medical))~~ Washington apple health (WAH) program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues to the last day of the last month of the certification period.

(2) For a ~~((child))~~ newborn eligible for ~~((the newborn medical program))~~ WAH, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for ~~((a medical program))~~ WAH based on pregnancy, the certification period ends the

last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For a person eligible for the WAH refugee program, the certification period ends at the end of the eighth month following the client's date of entry to the United States.

~~(5) For ((families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011)) all other WAH-CN coverage, the certification period is twelve months.~~

~~((5)) (6) For children, ((the certification period is twelve months.)) eligibility is continuous ((without regard to changes in circumstances other than aging out of the program, moving out of state, failing to pay a required premium(s), incarceration or death.~~

~~(6)) throughout the certification period regardless of a change in circumstances, unless a required premium (described in WAC 182-505-0225) is not paid for three consecutive months or the child:~~

~~(a) Turns age nineteen;~~

~~(b) Moves out of state;~~

~~(c) Is incarcerated; or~~

~~(d) Dies.~~

~~(7) When the child turns nineteen, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:~~

~~(a) The child is receiving inpatient services ((see) described in WAC ((388-505-0230)) 182-514-0230) on the last day of the month the child turns nineteen;~~

~~(b) The inpatient stay continues into the following month or months; and~~

~~(c) The child remains eligible except for ((exceeding)) turning age nineteen.~~

~~((7) For an SSI-related person the certification period is twelve months.~~

~~(8) When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:~~

~~(a) Approved application for cash or food assistance; or~~

~~(b) Completed eligibility review.~~

~~(9)) (8) A retroactive certification period ((can begin up to three months immediately before the month of application when:~~

~~(a) The client would have been eligible for medical assistance if the client had applied; and~~

~~(b) The client received covered medical services as described in WAC 388-501-0060 and 388-501-0065.~~

~~(10) If the client is eligible only during the three-month retroactive period, that period is the only period of certification, except when:~~

~~(a) A pregnant woman is eligible in one of the three months preceding the month of application, but no earlier than the month of conception. Eligibility continues as described in subsection (3);~~

~~(b) A child is eligible for a CN medical program as described in WAC 388-505-0210 (1) through (5) and (7) in one of the three months preceding the month of application.~~

~~Eligibility continues for twelve months from the earliest month that the child is determined eligible.~~

~~((11) Any months of a retroactive certification period are added to the designated certification periods described in this section)) is described in WAC 182-504-0005.~~

~~((12)) (9) Coverage under premium-based programs included in apple health for kids as described in ((WAC 388-505-0210 and)) chapter ((388-542)) 182-505 WAC begins no sooner than the month after creditable coverage ends.~~

## NEW SECTION

**WAC 182-504-0120 Washington apple health—Effective dates of changes.** (1) We (the agency or its designee) determine the date a change affects your Washington apple health (WAH) coverage based on:

(a) The date you report the change to us;

(b) The date you give us the requested verification; and

(c) The type of WAH you or your family is receiving.

(2) When you report a change after you submit your application, but before your application is processed, the change is considered when processing your application.

(3) If another person, agency, or data source reports a change in circumstances, the information may be used in determining your eligibility. We will not rely on information received from a data source to terminate your WAH coverage without requesting additional information from you.

(4) A change in income affects your ongoing eligibility only if it is expected to continue beyond the month when the change is reported, and only if it is expected to last more than two months.

(5) A change that results in termination of your WAH coverage takes effect the first of the month following the advance notice period.

(6) The advance notice period:

(a) Begins on the day we send the letter about the change to you; and

(b) Is determined according to the rules in WAC 182-518-0025.

(7) A change that results in a decreased scope of care takes effect on the first of the month following the advance notice period. Examples of a decreased scope of care are:

(a) Termination of WAH categorically needy (CN) medical and approval for other WAH coverage with a lesser scope of care such as WAH medically needy (MN) medical;

(b) WAH-MN recipient with a change that increases the spenddown liability amount;

(c) WAH-MN recipient with no spenddown liability with a change that results in WAH-MN with a spenddown liability.

(8) A change that results in an increased scope of care takes effect on the first of the month following the date the change was reported, when you provide the required verification:

(a) Within ten days of the date we requested the verification; or

(b) By the end of the month of report, whichever is later.

(9) If you do not provide the required verification timely under subsection (8) of this section, we make the change effective the first of the month following the month in which

you provide the verification. We may terminate your WAH coverage if you do not provide the required verification.

(10) When a law or regulation requires a change in WAH, the date specified by the law or regulation is the effective date of the change.

(11) When a change in income or allowable expenses changes the amount you pay towards the cost of your care for institutional programs, we calculate your new participation amount beginning with the month your income or allowable expenses changed.

(12) We use the following rules to determine the effective date of change for the health care for workers with disabilities (HWD) program:

(a) HWD coverage begins the month after coverage in another medical program ends and the premium amount has been approved by the eligible person; and

(b) If a change in income increases or decreases the monthly premium, the change is effective the first of the month after the change is reported. For more information on premium requirements for this program, see WAC 182-511-1250.

**AMENDATORY SECTION** (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

**WAC 182-504-0125 Washington apple health—**  
**Effect of changes ((on medical program eligibility)).** (1)

~~((An individual)) If a person reports a change during a certification period, the person continues to be eligible for ((medical assistance)) Washington apple health (WAH) categorically needy (CN) or alternative benefit plan (ABP) coverage until ((the agency or the agency's designee completes a review of the individual's case record and determines the individual is ineligible for medical assistance or is eligible for another medical program. This applies to all individuals who, during a certification period, become ineligible for, or are terminated from, or request termination from:~~

~~(a) A categorically needy (CN) medicaid program;~~

~~(b) A program included in apple health for kids; or~~

~~(c) Any of the following cash grants:~~

~~(i) Temporary assistance for needy families (TANF);~~

~~(ii) Supplemental security income (SSI); or~~

~~(iii) Aged, blind, disabled (ABD) cash assistance. See WAC 388-434-0005 for changes reported during eligibility review)) a determination of eligibility or ineligibility for other WAH programs is completed.~~

~~(2) If a person is no longer eligible for WAH due to a change, then the agency or its designee is responsible to ensure eligibility for other insurance affordability programs (as described in WAC 182-503-0001) is coordinated and that information necessary to determine eligibility is securely provided to the health benefits exchange making the determination.~~

~~(3) If WAH-CN ((medical)) or ABP coverage ends under one program and the ((individual)) person meets all the eligibility requirements to be eligible under a different ((CN medical)) WAH program, ((coverage)) WAH is approved under the new program. If the ((individual's)) person's income exceeds the standard for WAH-CN ((medical)) coverage, the~~

~~agency or ((the agency's)) its designee ((considers)) determines eligibility under:~~

~~(a) The medically needy (MN) program described in chapter 182-519 WAC where appropriate; and~~

~~(b) The person is referred for an eligibility determination under another insurance affordability program, if not excluded from coverage under these programs on the basis of age, immigration status, medicare, or other minimum essential coverage.~~

~~((3)) (4) If WAH-CN ((medical)) or ABP coverage ends and the ((individual)) person does not meet the eligibility requirements to be eligible under a different ((medical)) WAH program, the redetermination process for WAH is complete and ((medical assistance)) WAH coverage is terminated giving advance and adequate notice, with the following exception:~~

~~(a) ((An individual)) A person who claims to have a disability is referred to the division of disability determination services for a disability determination if that is the only basis under which the ((individual)) person is potentially eligible for ((medical assistance)) WAH. Pending the outcome of the disability determination, ((medical eligibility is considered)) coverage is continued under the SSI-related medical program described in chapter ((388-475)) 182-512 WAC if countable income is below the SSI categorically needy income level (CNIL).~~

~~(b) ((An individual)) A person with countable income in excess of the SSI-related ((CN medical standard is considered for medically needy (MN) coverage or medically needy (f)) CNIL, is eligible for WAH or WAH-MN((f)) with spend-down as described in chapter 182-519 WAC pending the final outcome of the disability determination.~~

~~((4) An individual who becomes ineligible for refugee cash assistance is eligible for continued refugee medical assistance through the eight-month limit, as described in WAC 182-507-0130.~~

~~(5) An individual who receives a TANF cash grant or family medical is eligible for a medical extension, as described under WAC 182-523-0100, when the cash grant or family medical program is terminated as a result of:~~

~~(a) An increase in earned income; or~~

~~(b) Collection of child or spousal support.~~

~~((6)) (5) A person who receives coverage under the WAH parent and caretaker relative program described in WAC 182-505-0240 is eligible for the WAH health care extension program, as described under WAC 182-523-0100, when the coverage ends as a result of an increase in earned income.~~

~~(6) Changes in income during a certification period do not affect((s)) eligibility for ((all medical programs except)) the following programs:~~

~~(a) WAH for pregnant ((women's CN medical programs)) women;~~

~~(b) ((A program included in apple health for kids)) WAH for children, except as specified in subsection ((5)) (7) of this section; ((or))~~

~~(c) ((The first six months of the medical extension benefits described under chapter 182-523 WAC.~~

~~(7) A child who receives)) WAH for SSI recipients;~~

~~(d) WAH refugee program; and~~

(e) WAH health care extension.

(7) The agency or its designee redetermines eligibility for children receiving WAH for kids premium-based coverage ~~((under a program included in apple health for kids))~~ described in WAC 182-505-0210 ~~((and chapter 182-505 WAC must be redetermined for a nonpremium-based coverage))~~ when the ~~((family reports))~~:

(a) ~~((Family))~~ Household's income ~~((has decreased))~~ decreases to less than two hundred percent federal poverty level (FPL);

(b) ~~((The))~~ Child becomes pregnant;

(c) ~~((A change in))~~ Family size changes; or

(d) ~~((The))~~ Child receives SSI.

(8) ~~((An individual))~~ A person who receives SSI-related CN ~~((medical))~~ coverage ~~((and reports))~~ who has a change in earned income which exceeds the substantial gainful activity (SGA) limit set by the Social Security Administration, no longer meets the definition of a disabled ~~((individual))~~ person as described in WAC 182-512-0050, unless the ~~((individual))~~ person continues to receive a Title 2 cash benefit, ~~((e.g.,))~~ such as Social Security disability income (SSDI), disabled adult child (DAC), or disabled widow's benefits (DWB). This does not apply to SSI cash recipients, SSI-deemed eligible clients, as described in WAC 182-512-0880, or persons who meet the medicaid eligibility criteria in section 1619(b) of the Social Security Act.

(9) The agency or ~~((the agency's))~~ its designee redetermines eligibility for ~~((such an individual))~~ a person described in subsection (8) of this section under the ~~((health care))~~ WAH for workers with disabilities (HWD) program which waives the SGA income test. The HWD program is a premium-based program and the ~~((individual))~~ person must approve the premium amount before the agency or ~~((the agency's))~~ its designee can authorize ongoing CN ~~((medical benefits))~~ coverage under this program.

(10) Prior to a scheduled renewal or March 31, 2014, whichever is later, eligibility determinations using modified adjusted gross income (MAGI) methodologies will not cause a person to become ineligible for WAH, to receive less benefits, or to pay a premium when:

(a) The person is enrolled in WAH coverage at the time of the eligibility decision;

(b) The person was enrolled prior to October 1, 2013; and

(c) At the time of the eligibility determination, the person's enrollment in WAH is not already based on MAGI methodologies.

NEW SECTION

**WAC 182-504-0035 Washington apple health—Renewals.** (1) For all Washington apple health (WAH) programs, the following applies:

(a) You are required to complete a renewal of eligibility at least every twelve months with the following exceptions:

(i) If you are eligible for WAH medically needy with spenddown, then you must complete a new application at the end of each three- or six-month base period;

(ii) If you are eligible for WAH alien emergency medical, then you are certified for a specific period of time to

cover emergency inpatient hospitalization costs only (see WAC 182-507-0115(8)); or

(iii) If you are eligible for WAH refugee coverage, you must complete a renewal of eligibility after eight months.

(b) You may complete renewals online, by phone, or mailed or faxed to us (the agency or its designee).

(c) If your WAH is renewed, we decide the certification period according to WAC 182-504-0015.

(d) We review all eligibility factors subject to change during the renewal process.

(e) We redetermine eligibility as described in WAC 182-504-0125 and send you written notice as described in WAC 182-518-0005 before WAH is terminated.

(f) If you need help meeting the requirements of this section, we provide equal access services as described in WAC 182-503-0120.

(2) For programs based on modified adjusted gross income (MAGI) as described in WAC 182-503-0510:

(a) Sixty days prior to the end of the certification period:

(i) When information from electronic sources shows income is reasonably compatible (as defined in WAC 182-500-0095), we administratively renew your coverage (as defined in WAC 182-500-0010) for a new certification period and send you a letter letting you know.

(ii) You are sent a notice of renewal with the information used and you are required to inform us if any of the information we used is wrong.

(iii) If we are unable to complete an administrative renewal (as defined in WAC 182-500-0010), you must give us a signed renewal in order for us to decide if you will continue to get WAH coverage beyond the current certification period.

(iv) We follow the requirements described in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(b) If your WAH coverage is terminated because you didn't renew, you have ninety days from the termination date to give us a completed renewal. If we decide you are still eligible to get WAH coverage, we will restore your WAH without a gap in coverage.

(3) For non-MAGI based programs (as described in WAC 182-503-0510):

(a) Forty-five days prior to the end of the certification period, we send notice with a renewal form to be completed, signed, and returned by the end of the certification period.

(b) We follow the requirements in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(c) If you are terminated for failure to renew, you have thirty days from the termination date to submit a completed renewal. If still eligible, we will restore your WAH without a gap in coverage.

NEW SECTION

**WAC 182-504-0105 Washington apple health—Changes that must be reported.** (1) You must report changes in your household and family circumstances to us

(the agency or its designee) timely according to WAC 182-504-0110.

(2) We tell you what you are required to report at the time you are approved for WAH coverage. We also will tell you if the reporting requirements change.

(3) You must report the following:

(a) Change in residential address;

(b) Change in mailing address;

(c) Change in marital status;

(d) When family members or dependents move in or out of the residence;

(e) Pregnancy;

(f) Incarceration;

(g) Change in institutional status;

(h) Change in health insurance coverage including medicare eligibility; and

(i) Change in immigration or citizenship status.

(4) If you are eligible for a WAH long-term care program described in chapter 182-513 or 182-515 WAC, you must also report changes to the following:

(a) Income;

(b) Resources;

(c) Medical expenses; and

(d) Spouse or dependent changes in income or shelter cost when expenses are allowed for either.

(5) If you get WAH parent or caretaker or WAH modified adjusted gross income (MAGI)-based adult coverage, you must also report changes to the following:

(a) When income increases by one hundred fifty dollars or more a month and the change will continue for at least two months;

(b) Anticipated federal income tax filing status; and

(c) The number of tax dependents you intend to claim on your federal income taxes.

(6) If you get WAH based on age, blindness, or disability (SSI-related medical), then you must also report changes to the following:

(a) Income; and

(b) Resources.

#### NEW SECTION

**WAC 182-504-0110 Washington apple health—When to report changes.** (1) All changes you report to us (the agency or its designee) are used to decide if you can receive or keep receiving Washington apple health (WAH) coverage.

(2) You must report changes during your certification period within thirty days of when the change happened.

(3) You must report all changes during application, renewal, or redetermination of your WAH eligibility, regardless of when the change happened.

(4) For a change in income, the date a change happened is the first date you received income based on the change. For example, the date you receive your first paycheck for a new job or the date you got a paycheck with a wage increase is the date the change happened.

(5) If you don't report a change or you report a change late, we will decide if you can receive or keep receiving

WAH coverage based on the date the change was required to be reported.

(6) If you don't report a change or you report a change late, it may result in us overpaying you and you having to pay us back for the health care costs we overpaid. See chapter 182-520 WAC.

AMENDATORY SECTION (Amending WSR 11-23-091, filed 11/17/11, effective 11/21/11)

**WAC 182-505-0100 ((Medical programs)) Washington apple health—Monthly income standards based on the federal poverty level (FPL).** (1) Each year, the federal government publishes new federal poverty level (FPL) income standards in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. The income standards for the following ((medical)) Washington apple health (WAH) programs change on the first day of April every year based on the new FPL:

(a) ~~((Pregnant women's program up to one hundred eighty-five))~~ WAH for parents and caretaker relatives up to thirty-five percent of FPL (see WAC 182-505-0540). Parents and caretaker relatives whose earned income exceeds this limit may be eligible for the WAH transitional medical program as described in WAC 182-523-0100;

(b) ~~((A program included in apple health for kids up to two hundred))~~ Modified adjusted gross income (MAGI)-based WAH for adults up to one hundred thirty-three percent of FPL;

(c) ~~((Health care for workers with disabilities (HWD) up to two hundred twenty))~~ WAH for pregnant women up to one hundred eighty-five percent of FPL; and

(d) ~~((Premium-based coverage under a program included in apple health for kids over two hundred percent of FPL, but not over three hundred))~~ WAH for children up to two hundred percent of FPL; and

(e) Premium-based coverage under WAH for children over two hundred percent of FPL, but not over three hundred percent of FPL.

(2) The ~~((department))~~ agency uses the FPL income standards to determine((=

(a) ~~The mandatory or optional medicaid status of an individual; and~~

(b) ~~Premium amount, if any, for a child.~~

(3) ~~There are no resource limits for the programs under this section))~~ the premium amount, if any, for a child.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0115 ((Medical)) Washington apple health—Eligibility for pregnant women.** ((Eligibility requirements for pregnancy medical are described below.))

(1) A pregnant woman is eligible for ~~((categorically needy (CN) scope of care))~~ the Washington apple health (WAH) for pregnant women program if she ~~((meets the following requirements)):~~

(a) Meets citizenship or immigration status ~~((chapter 388-424 WAC))~~ under WAC 182-503-0535; ((and))

(b) Meets Social Security ((account)) number ((chapter 388-474 WAC)) requirements under WAC 182-503-0115; ((and))

(c) ((Is a)) Meets Washington state ((resident (chapter 388-468 WAC)) residency requirements under WAC 182-503-0520 and 182-503-0525; and

(d) Has countable income ((as described in)) at or below the limit described in:

(i) WAC ((388-478-0075)) 182-505-0100 to be eligible for categorically needy (CN) coverage; or

(ii) WAC 182-505-0100 to be eligible for medically needy (MN) coverage. MN coverage begins when the pregnant woman meets any required spenddown liability as described in WAC 182-519-0110.

(2) ((A pregnant woman is considered for medically needy (MN) scope of care if she meets the requirements in subsection (1)(a) through (e) of this section and:

(a) Has countable income that exceeds the standard in subsection (1)(d) of this section; and

(b) Has countable resources that do not exceed the standard in WAC 388-478-0070.

(3) A pregnant woman may be eligible for noncitizen pregnancy medical if she is not eligible for medical described in subsections (1) and (2) of this section due to citizenship, immigrant status, or social security number requirements.

(4) A pregnant woman meeting the eligibility criteria in subsection (3) is eligible for:

(a) CN scope of care when the countable income is at or below the income standard described in subsection (1)(d); or

(b) MN scope of care when:

(i) The countable income exceeds the standard in subsection (1)(d); and

(ii) The resources do not exceed the standard described in WAC 388-478-0070.

(5) Consider as income to the pregnant woman the amount that is actually contributed to her by the father of her unborn child when the pregnant woman is not married to the father.

(6) A noncitizen pregnant woman who does not need to meet the requirements in subsection (1)(a) or (b) of this section to be eligible for WAH and receives either CN or MN coverage based upon her countable income as described in subsection (1)(d) of this section.

(3) The assignment of child support and medical support rights as described in ((chapter 388-422)) WAC ((do)) 182-503-0540 and 182-503-0545 does not apply to pregnant women.

((7)) (4) A woman who was eligible for and received ((medical)) coverage under any WAH program on the last day of pregnancy is eligible for extended medical ((benefits)) coverage for postpartum care for a minimum of sixty days from the end of her pregnancy. This includes women who meet an MN spenddown liability with expenses incurred no later than the date the pregnancy ends. This extension continues through the end of the month in which the sixtieth day falls.

((8) A woman who was eligible for medical coverage on the last day of pregnancy is) (5) All women approved for WAH pregnancy coverage at any time are eligible for family planning services for twelve months ((from the end of)) after

the pregnancy ((even when eligibility for pregnancy was determined after the pregnancy ended)) ends.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-505-0210 Washington apple health ((for kids and other children's medical assistance programs))—Eligibility for children. ((Funding for coverage under the apple health for kids programs may come through Title XIX (medicaid), Title XXI (CHIP), or through state-funded programs. There are no resource limits for the apple health for kids programs. Apple health for kids coverage is free to children in households with incomes of no more than two hundred percent of the federal poverty level (FPL), and available on a premium basis to children in households with incomes of no more than three hundred percent FPL.

(1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

(a) The newborn is a resident of the state of Washington;

(b) The newborn's mother is eligible for medical assistance:

(i) On the date of the newborn's birth, including a retroactive eligibility determination; or

(ii) Based on meeting a medically needy (MN) spenddown liability with expenses incurred on, or prior to, the date of the newborn's birth.

(2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for free federally matched CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A Social Security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two hundred percent of federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or

(e) They received supplemental security income (SSI) cash payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are currently eligible for SSI.

(3) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for free state-funded coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for



premium-based federally matched CN coverage as described in chapter 388-542 WAC when they meet the following criteria:

~~(a) State residence as described in chapter 388-468 WAC;~~

~~(b) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);~~

~~(c) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;~~

~~(d) They do not have other creditable health insurance as described in WAC 388-542-0050; and~~

~~(e) They pay the required monthly premiums as described in WAC 388-505-0211.~~

(5) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for premium-based state-funded CN coverage when they meet the following criteria:

~~(a) State residence as described in chapter 388-468 WAC;~~

~~(b) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;~~

~~(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and~~

~~(d) They pay the required monthly premium as described in WAC 388-505-0211.~~

(6) Children under age nineteen are eligible for the medically needy (MN) medicaid program when they meet the following criteria:

(a) Citizenship or immigrant status, state residence, and Social Security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) Are ineligible for other federally matched CN programs;

(c) Have income that exceeds three hundred percent FPL; or

(d) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (4) of this section because of creditable coverage; and

(e) Meet their spenddown liability as described in WAC 388-519-0100 and 388-519-0110.

(7) Children under the age of nineteen who reside or are expected to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center, nursing home, institution for mental diseases (IMD) or inpatient psychiatric facility may be eligible for apple health for kids health care coverage based upon institutional rules described in WAC 388-505-0260. Individuals between the age of nineteen and twenty-one may still be eligible for health care coverage but not under the apple health for kids programs. See WAC 388-505-0230 "Family related institutional medical" and WAC 388-513-1320 "Determining institutional status for long-term care" for more information.

(8) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, and who meet eligibility require-

ments for residency, Social Security number, and citizenship as described in subsection (2)(a), (b) and (c) of this section are eligible for federally matched CN medicaid coverage through the month of their:

~~(a) Eighteenth birthday;~~

~~(b) Twenty-first birthday if the children's administration determines they remain eligible for continued foster care services; or~~

~~(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.~~

(9) Children are eligible for state-funded CN coverage through the month of their eighteenth birthday if they:

(a) Are in foster care under the legal responsibility of the state or a federally recognized tribe located within the state; and

(b) Do not meet social security number and citizenship requirements in subsection (2)(b) and (c) of this section.

(10) Children who receive subsidized adoption services are eligible for federally matched CN coverage.

(11) Children under the age of nineteen not eligible for apple health for kids programs listed above may be eligible for one of the following medical assistance programs not included in apple health for kids:

~~(a) Family medical as described in WAC 388-505-0220;~~

~~(b) Medical extensions as described in WAC 388-523-0100;~~

~~(c) SSI-related MN if they:~~

~~(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(e) of this section; and~~

~~(ii) Have countable income above the level described in WAC 388-478-0070(1).~~

~~(d) Home and community based waiver programs as described in chapter 388-515 WAC; or~~

~~(e) Alien medical as described in WAC 388-438-0110, if they:~~

~~(i) Have a documented emergency medical condition as defined in WAC 388-500-0005;~~

~~(ii) Have income more than three hundred percent FPL;~~

~~or~~

~~(iii) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (5) of this section because of creditable coverage.~~

(12) Except for a child described in subsection (7) of this section, an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for any apple health for kids program.)) (1) Unless otherwise stated in this section, a child is a person who is under nineteen years of age (including the month the person turns nineteen). To be eligible for one of the Washington apple health (WAH) for kids programs described below, a child must:

(a) Be a resident of Washington state, as described in WAC 182-503-0520 and 182-503-0525;

(b) Provide a Social Security number (SSN) as described in WAC 182-503-0515 unless exempt; and

(c) Meet any additional requirements listed for the specific program.

(2) Children under one year of age are eligible for WAH categorically needy (CN) coverage when they are born to a mother who is eligible for WAH:

(a) On the date of the newborn's birth, including a retro-active eligibility determination; or

(b) Based on meeting a medically needy (MN) spend-down liability with expenses incurred no later than the date of the newborn's birth.

(3) Children are eligible for WAH at no cost when they:

(a) Have countable family income that is no more than two hundred percent of the federal poverty level (FPL) as described in WAC 182-505-0100;

(b) Are currently eligible for supplemental security income (SSI); or

(c) Received SSI payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions.

(4) Children are eligible for premium-based WAH as described in WAC 182-505-0215 when they:

(a) Have countable family income that is not more than three hundred percent of FPL as described in WAC 182-505-0100;

(b) Do not have other creditable health insurance as described in WAC 182-505-0220; and

(c) Pay the required monthly premiums as described in WAC 182-505-0225.

(5) Children are eligible for WAH home and community based waiver programs as described in chapter 182-515 WAC when they:

(a) Meet citizenship or immigration status as described in WAC 182-503-0525;

(b) Meet SSI-related eligibility requirements as described in chapter 182-512 WAC; and

(c) Meet program specific age requirements.

(6) Children are eligible for the WAH long-term care program when they meet the institutional program rules as described in chapter 182-513 or 182-514 WAC, and either:

(a) Reside or are expected to reside in a medical institution, intermediate care facility for the intellectually disabled (ICF/ID), hospice care center, or nursing home for thirty days or longer; or

(b) Reside or are expected to reside in an institution for mental diseases (IMD) or inpatient psychiatric facility:

(i) For ninety days or longer and are age seventeen or younger; or

(ii) For thirty days or longer and are age eighteen through twenty-one.

(7) Children are eligible for the WAH medically needy (MN) program as described in WAC 182-519-0100 when they:

(a) Meet citizenship or immigrant status as described in WAC 182-503-0535;

(b) Have countable family income that exceeds three hundred percent of FPL as described in WAC 182-505-0100; or

(c) Have countable family income that is more than two hundred percent of FPL, but are not eligible for premium-based WAH as described in subsection (4) of this section because of creditable coverage; and

(d) Meet a spenddown liability as described in WAC 182-515-0110, if required.

(8) Children are eligible for WAH SSI-related programs as described in chapter 182-512 WAC when they:

(a) Meet citizenship or immigration status as described in WAC 182-503-0535;

(b) Meet SSI-related eligibility as described in chapter 182-512 WAC; and

(c) Meet an MN spenddown liability as described in WAC 182-519-0110, if required.

(9) Children who are not eligible for WAH under subsections (5) through (8) of this section because of their immigration status, may be eligible for the WAH alien emergency medical program if they:

(a) Meet the eligibility requirements of WAC 182-507-0110;

(b) Have countable family income less than three hundred percent of FPL, but do not qualify for premium-based WAH, as described in subsection (4) of this section because of creditable coverage; and

(c) Meet a spenddown liability as described in WAC 182-519-0110, if required.

(10) Children who are in foster care or receive subsidized adoption services are eligible for coverage under the WAH foster care program described in WAC 182-505-0211.

(11) Children who are incarcerated in a public institution (as defined in WAC 182-500-0050), or a city or county jail, are not eligible for any WAH program, with the following exceptions:

(a) Children who reside in an IMD as described in subsection (6) of this section; or

(b) Children who are released from a public institution or city or county jail to a hospital for inpatient treatment. Children who are released from an IMD to a hospital setting must be unconditionally discharged from the IMD to qualify for coverage under this provision.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0215 Washington apple health—Premium-based children's program—Purpose and scope** (~~of premium-based health care coverage under programs included in apple health for kids~~). The ((department)) medicaid agency administers the programs included in Washington apple health (WAH) for kids that provide premium-based coverage through a combination of state and federal funding sources as described below:

(1) Federally matched health care coverage as authorized by Title XXI of the Social Security Act state children's health insurance program ((SCHIP)) (CHIP) and RCW 74.09.450 for citizen and federally qualified immigrant children whose family income is above two hundred percent of the federal poverty level (FPL) but is not above three hundred percent FPL.

(2) State funded health care coverage for children with family income above two hundred percent FPL, but not above three hundred percent FPL, who are ineligible for ((Title XXI)) federally matched health care coverage due to immigration ((issues)) status.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0225 Premium-based Washington apple health for kids—Premium requirements** ~~((for premium-based health care coverage under programs included in apple health for kids))~~. (1) For the purposes of this chapter, "premium" means an amount paid for ~~((health care))~~ Washington apple health (WAH) coverage ~~((under programs included in apple health))~~ for kids as described in WAC ~~((388-505-0210 (4) and (5)))~~ 182-505-0210(4).

(2) Payment of a premium is required as a condition of eligibility for premium-based WAH coverage ~~((under programs included in apple health))~~ for kids, as described in WAC ~~((388-505-0210 (4) and (5)))~~ 182-505-0210(4), unless the child is:

- (a) Pregnant; or
- (b) An American Indian or Alaska native.

(3) The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for ~~((medical))~~ WAH coverage received in a month or months before the determination of eligibility.

~~((4))~~ ~~((The premium amount for the assistance unit (AU) is based on the net countable income as described in WAC 388-450-0210 and the number of children in the AU. If the household includes more than one AU, the premium amount billed for the AUs may be different amounts.~~

~~((5))~~ The premium amount is limited to a monthly maximum of two premiums for ~~((households))~~ families with two or more children.

~~((6))~~ (5) The premium amount for each U.S. citizen or lawfully present alien child described in WAC ~~((388-505-0210))~~ 182-505-0210(4) is:

(a) Twenty dollars per month per child for ~~((households))~~ families with countable income above two hundred percent FPL, but not above two hundred and fifty percent FPL; or

(b) Thirty dollars per month per child for ~~((households))~~ families with countable income above two hundred and fifty percent FPL, but not above three hundred percent FPL.

~~((7))~~ (6) The premium amount for each noncitizen child described in WAC ~~((388-505-0210(5)))~~ 182-505-0210(4) who is not a lawfully present qualified or nonqualified alien is no greater than the average of the state-share of the per capita cost for state-funded children's health coverage. The premium amount is set every two years, based on the forecasted per capita costs for that period.

~~((8))~~ (7) All children in an assistance unit (AU) are ineligible for ~~((health care))~~ WAH coverage when the ~~((head of household))~~ family fails to pay required premium payments for three consecutive months.

~~((9))~~ (8) When the agency or ~~((the agency's))~~ its designee terminates the ~~((medical))~~ WAH coverage ~~((of a child))~~ due to nonpayment of premiums, the child's eligibility is restored ~~((only))~~ when the:

(a) Past due premiums are paid in full prior to the end of the certification period; or

(b) The child becomes eligible for coverage under ~~((a nonpremium-based CN health care program))~~ WAH without a premium.

~~((10))~~ (9) The agency or ~~((the agency's))~~ its designee writes off past-due premiums after twelve months.

~~((11))~~ (10) If all past due premiums are paid after the certification period is over:

(a) Eligibility for prior months is not restored; and

(b) Children are not eligible for premium-based ~~((coverage under apple health))~~ WAH for kids until:

(i) The month the premiums are paid or the agency writes off the debt; and

(ii) The family reapplies and is found eligible.

~~((12))~~ (11) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the AU. The full premium amount is the obligation of the head of household of the AU. A family can decide to request health care coverage only for certain children in the AU, if they want to reduce premium obligation.

~~((13))~~ (12) A change that affects the premium amount is effective the month after the change is reported and processed.

~~((14))~~ (13) A sponsor or other third party may pay the premium on behalf of the child or children in the AU. The premium payment requirement remains the obligation of head of household of the AU. The failure of a sponsor or other third party to pay the premium does not eliminate the obligation of the head of household to pay past due premiums.

AMENDATORY SECTION (Amending WSR 11-23-077, filed 11/15/11, effective 12/16/11)

**WAC 182-505-0235 Washington apple health—Premium-based children's program—Order of payments** ~~((under the premium-based apple health for kids program as funded by Title XXI of the Social Security Act))~~.

The agency administers ~~((the programs included in))~~ premium-based Washington apple health (WAH) for kids ~~((that provide premium-based))~~ coverage through a combination of state and federal funding sources. For expenditures funded by Title XXI of the Social Security Act (SSA), also known as the children's health insurance program (CHIP), federal financial participation will be sought in compliance with section 2105 ~~((of the act))~~ in the following order:

(1) For ~~((medical assistance))~~ health care coverage for targeted low-income children from birth through age eighteen, as described in section 4 of the Title XXI state plan.

(2) For ~~((medical assistance))~~ health care coverage for unborn children, as described in section 4.1.2.1 of the Title XXI state plan.

(3) For ~~((medical assistance))~~ health care coverage for medicaid-eligible children, as described in CHIPRA, section 214.

(4) For ~~((medical assistance))~~ health care coverage for medicaid-eligible children, as described in section 2105 (g)(4)(A) and (B) of the ~~((act))~~ SSA.

(5) For allowable administrative expenditures under the ten percent cap, as defined in section 2105 (a)(1)(D) of the act in the following order:

(a) First, for reasonable expenditures necessary to administer the plan, including staffing for eligibility determi-

nations, plan administration, quality assurance, and similar costs.

(b) Second, for a toll-free 800 telephone number providing information regarding the Washington apple health for kids program.

(c) Third, for health services initiatives, such as the funding of the Washington poison center, to the extent that state funds are appropriated by the legislature.

(d) Fourth, for translation or interpretation services in connection with the enrollment, retention, or use of services under this title by individuals for whom English is not their primary language, but only to the extent that state-matching funds are made available.

(e) Fifth, for outreach services for the Washington apple health for kids program, to the extent that appropriated state-matching funds are available.

(f) Sixth, for other CMS-approved activities to the extent that federal matching funds are available, and where such activities do not duplicate efforts conducted under this subsection.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0237 Premium-based Washington apple health for kids—Other rules that apply ((to premium-based health care coverage under programs included in apple health for kids))**. In addition to the rules of this chapter, children receiving premium-based ((coverage under)) Washington apple health (WAH) for kids are subject to the following rules:

(1) Chapter ((388-538)) 182-538 WAC, Managed care (except WAC ((388-538-061)) 182-538-061, ((388-538-063)) 182-538-063, and ((388-538-065)) 182-538-065) if the child is covered under federally matched CN coverage;

(2) WAC ((388-505-0210 (4) and (5)), apple health for kids program eligibility;

(3) WAC 388-505-0211, Premium requirements for premium-based coverage under programs included in apple health for kids;

(4) WAC 388-416-0015(12)) 182-504-0015(8), Certification periods for categorically needy (CN) scope of care medical assistance programs; and

((5)) (3) WAC ((388-418-0025)) 182-504-0125, Effect of changes on medical program eligibility.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0240 ((Family medical eligibility)) Washington apple health—Parents and caretaker relatives**. (1) A person is eligible for Washington apple health (WAH) categorically needy (CN) ((medical assistance)) coverage when ((they are)) he or she:

(a) ((Receiving temporary assistance for needy families (TANF) cash benefits

(b) Receiving Tribal TANF;

(c) Receiving cash diversion assistance, except SFA relatable families, described in WAC 388-400-0010(2);

(d) Eligible for TANF cash benefits but choose not to receive;

(e) Over the TANF cash payment standard but under the family medical payment standard as described in WAC 388-478-0065; or

(f) Not eligible for or receiving TANF cash assistance, but meet the eligibility criteria for aid to families with dependent children (AFDC) in effect on July 16, 1996 except that:

(i) Earned income is treated as described in WAC 388-450-0210; and

(ii) Resources are treated as described in WAC 388-470-0005 for applicants and 388-470-0026 for recipients.

(2) An adult cannot receive a family medicaid program unless the household includes a child who is eligible for:

(a) Family medicaid;

(b) SSI; or

(c) Children's medicaid.

(3) A person is eligible for CN family medical coverage when the person is not eligible for or receiving cash benefits solely because the person:

(a) Received sixty months of TANF cash benefits or is a member of an assistance unit which has received sixty months of TANF cash benefits;

(b) Failed to meet the school attendance requirement in chapter 388-400 WAC;

(c) Is an unmarried minor parent who is not in a department-approved living situation;

(d) Is a parent or caretaker relative who fails to notify the department within five days of the date the child leaves the home and the child's absence will exceed one hundred eighty days;

(e) Is a fleeing felon or fleeing to avoid prosecution for a felony charge, or is a probation and parole violator;

(f) Was convicted of a drug related felony;

(g) Was convicted of receiving benefits unlawfully;

(h) Was convicted of misrepresenting residence to obtain assistance in two or more states;

(i) Has gross earnings exceeding the TANF gross income level; or

(j) Is not cooperating with WorkFirst requirements.

(4) An adult must cooperate with the division of child support in the identification, use, and collection of medical support from responsible third parties, unless the person meets the medical exemption criteria described in WAC 388-505-0540 or the medical good cause criteria described in chapter 388-422 WAC.

(5) Except for a client described in WAC 388-505-0210(6), a person who is an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.) Is a parent or caretaker relative of an eligible dependent child described in WAC 182-503-0565;

(b) Meets citizenship and immigration status requirements described in WAC 182-503-0535;

(c) Meets general eligibility requirements described in WAC 182-503-0535; and

(d) Has countable income below thirty-five percent of the federal poverty level (FPL).

(2) To be eligible for WAH coverage as a caretaker relative, a person must be related to an eligible dependent child in one of the ways defined in WAC 182-500-0020.

(3) A person must cooperate with the state of Washington in the identification, use and collection of medical support from responsible third parties.

(4) A person who does not cooperate with the requirements in subsection (3) of this section is not eligible for WAH coverage.

#### NEW SECTION

**WAC 182-505-0250 Washington apple health—MAGI-based adult medical.** (1) A person is eligible for Washington apple health (WAH) modified adjusted gross income (MAGI)-based adult coverage when he or she meets the following requirements:

(a) Is age nineteen or older and under the age of sixty-five;

(b) Is not entitled to, or enrolled in, medicare benefits under Part A or B of Title XVIII of the Social Security Act;

(c) Is not otherwise eligible for and enrolled in mandatory coverage under one of the following programs:

(i) WAH SSI-related categorically needy (CN);

(ii) WAH foster care program; or

(iii) WAH adoption support program;

(d) Meets citizenship and immigration status requirements described in WAC 182-503-0535;

(e) Meets general eligibility requirements described in WAC 182-503-0505; and

(f) Has net countable income that is at or below one hundred thirty-three percent of the federal poverty level for a household of the applicable size.

(2) Parents or caretaker relatives of an eligible dependent child as described in WAC 182-503-0565 are first considered for WAH for families as described in WAC 182-505-0240. An individual whose countable income exceeds the standard to qualify for family coverage is considered for coverage under this section.

(3) Persons who are eligible under this section are eligible for WAH alternative benefit plan as defined in WAC 182-500-0010 coverage. A person described in this section is not eligible for medically needy WAH.

(4) Other coverage options for adults not eligible under this section are described in WAC 182-508-0001

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-505-0220	Definitions for premium-based health care coverage under programs included in apple health for kids.
WAC 182-505-0230	Waiting period for premium-based health care coverage under programs included in apple health for kids following employer coverage.
WAC 182-505-0245	Income and resource standards for family medical programs.

WAC 182-505-0515

Medical coverage resulting from a cash grant.

#### **Chapter 182-518 WAC**

#### **WASHINGTON APPLE HEALTH—LETTERS AND NOTICES**

#### NEW SECTION

**WAC 182-518-0005 Washington apple health—Notice requirements—General.** (1) This section applies only to Washington apple health (WAH) program eligibility notices and letters. It does not apply to notices or letters that we (the agency) send regarding requests for covered medical or dental services or related equipment, prior authorization requests or other medical services authorized by us.

(2) We send you written notices (letters) when we:

(a) Approve you for health care coverage for any program;

(b) Reconsider your application for other types of health care coverage based on new information;

(c) Deny you health care coverage, including if you withdrew your application, for any program (according to rules in WAC 182-503-0080);

(d) Ask you for more information to decide if you can start or renew getting health care coverage;

(e) Renew your health care coverage; or

(f) Change or terminate your health care coverage, even if we approve you for another kind of coverage.

(3) We send notices to you in your primary language if you don't read or understand English, according to the rules in WAC 182-503-0110 and follow equal access rules described in WAC 182-503-0120.

(4) All WAH notices we send you include the following information:

(a) Specific contact information for you if you have questions or need help with the notice;

(b) Your appeal rights, if an appeal is available, and the availability of free legal assistance; and

(c) Other information required by state or federal law.

#### NEW SECTION

**WAC 182-518-0010 Washington apple health—Notice requirements approval and denial notices.** (1) We (the agency or its designee) send written notice when you are approved, reopened, reinstated or denied for Washington apple health (WAH). In addition to the specific information described in this section, the notice includes the information described in WAC 182-518-0005(4).

(2) Approval notices include:

(a) The eligibility status for each person approved, reopened or reinstated;

(b) The certification period for the WAH program that is approved; and

(c) The eligibility effective date.

(3) Denial and withdrawal notices include:

(a) The date of denial;

(b) Specific reason(s) supporting the decision; and

(c) Specific rules or statutes that support or require the decision.

(4) If your request for health care coverage is denied or withdrawn for failure to provide requested information to us, the notice includes:

(a) A list of the information you did not provide;

(b) The date we asked you for the information and the day it was due;

(c) Notice that your eligibility will be reconsidered if we receive all information needed to determine your eligibility, including any changes to information we have, within thirty days of the date of the denial letter; and

(d) Information described in subsection (2) of this section.

#### NEW SECTION

**WAC 182-518-0015 Washington apple health—Notice requirements verification requests.** (1) We (the agency or its designee) send written notice to you when we need more information as described in WAC 182-503-0050 to decide if you can receive or continue to receive Washington apple health (WAH) coverage. The notice includes:

(a) The information that we need;

(b) When we must have the information (see WAC 182-503-0060 for applications and WAC 182-504-0035 for renewals);

(c) What action we will take and on what date, if we do not receive the information; and

(d) Information described in WAC 182-518-0005(4).

(2) We allow you at least ten days to return the information. If you ask, we may allow you more time to get us the information. If the tenth day falls on a weekend or holiday, the due date is the next business day.

(3) If the information we ask for costs money, we will pay for it or help you get the information in another way.

#### NEW SECTION

**WAC 182-518-0020 Washington apple health—Notice requirements—Renewals.** (1) We (the agency or its designee) send you advance written notice when the certification period ends for your Washington apple health (WAH) coverage as described in WAC 182-504-0035.

(2) When we can administratively renew your coverage (as defined in WAC 182-500-0010) we send you written notice that includes:

(a) Your new certification period;

(b) The information we used to recertify your coverage; and

(c) A request for you to give us updated information, if any of the information we used is inaccurate.

(3) When we cannot administratively renew your coverage, we send you written notice that includes:

(a) Information we currently have on record;

(b) How to complete the renewal using any of the methods described in WAC 182-504-0035 (1)(b); and

(c) If we need more information to renew your WAH coverage, we follow the rules in WAC 182-518-0015.

(4) We send your renewal notice following the timeline in:

(a) WAC 182-504-0035(2) for programs based on modified adjusted gross income (MAGI); or

(b) WAC 182-504-0035(3) for non-MAGI based programs.

**Reviser's note:** The spelling 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 182-518-0025 Washington apple health—Notice requirements—Changes in and terminations of coverage.** (1) We (the agency or its designee) send you written notice if your Washington apple health (WAH) coverage changes or terminates. The notice includes:

(a) The change in coverage;

(b) The date your coverage is changing or terminating;

(c) Specific reason(s) for the decision;

(d) Specific rules the decision is based on; and

(e) Information found in WAC 182-518-0005(4).

(2) When we terminate your WAH coverage because your income is more than the modified adjusted gross income (MAGI) standard, we redetermine your eligibility for other health care coverage as described in WAC 182-504-0125, before sending you the notice telling you your WAH coverage is terminating.

(3) We notify you at least ten days before we change or terminate your health care coverage unless:

(a) You asked us to change or terminate your coverage;

(b) We are changing or terminating your coverage due to a change in law that affects many people;

(c) We are terminating your coverage because everyone in your household is dead or they have been accepted to get medicaid coverage somewhere else (another local jurisdiction, state, territory, or commonwealth);

(d) We are terminating your coverage because mail we have sent to you has been returned to us with no forwarding address; or

(e) You are incarcerated and it is expected to last more than thirty days.

(4) The ten-day advance notice period starts on the day we send the notice to you and ends on the tenth day. If we do not have to give ten days' advance notice, we send the notice right away after getting the information that caused the change, but no later than the date we took the action the notice is about.

(5) You may request an appeal if you disagree with our decision to change or terminate your health care coverage and you may request continued coverage as described in WAC 182-504-0130.

#### NEW SECTION

**WAC 182-518-0030 Washington apple health—Notice requirements—Electronic notices.** (1) We (the agency or its designee) send you notices (letters) to inform you about your eligibility for Washington apple health (WAH) programs as described in WAC 182-518-0005 through 182-518-0025.

(2) For programs based on modified adjusted gross income (MAGI), you have the right to choose to get WAH eligibility notices by regular mail or in an electronic format.

(3) The primary applicant on an application may receive WAH notices electronically. To receive electronic notices you must:

(a) Have an account with Washington Healthplanfinder. (There is no charge to create an account); and

(b) Provide us with sufficient information to set up the electronic notices, such as a valid e-mail address, name and application identification number.

(4) You may ask to receive WAH notices electronically by:

(a) Mailing or giving us a written letter;

(b) Logging on to your Healthplanfinder account online and selecting the "I would prefer to receive written communications by e-mail" check box on the contact information page;

(c) Calling the Healthplanfinder customer support center.

(5) When you have asked for electronic notification, we:

(a) Send the notice to your Healthplanfinder account no later than one business day after creating the notice.

(b) Send you an e-mail message to notify you when a new WAH notice has been sent electronically to your Healthplanfinder account.

(i) The e-mail notice will not include the notice, information about the content of the notice, or other confidential information; and

(ii) You must log on to your Healthplanfinder account to get the notice.

(6) We will stop sending WAH notices electronically to you if you ask us. You must notify us if your e-mail address changes.

Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on June 25, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 17, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The following revisions to this rule are necessary:

- Clarify payment criteria for Medicare Part B deductible and coinsurance amounts; and
- Eliminate reference to Medicare Part D copay.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021; chapter 5, Laws of 2011 (ESHB 1086, 2010 2nd sp.s. c 1 s 208(25)); and Section 1902 (n)(3)(B) of the Social Security Act, as modified by Section 4714 of the Balanced Budget Act of 1997.

Statute Being Implemented: Chapter 5, Laws of 2011 (ESHB 1086, 2010 2nd sp.s. c 1 s 208(25)); and Section 1902 (n)(3)(B) of the Social Security Act, as modified by Section 4714 of the Balanced Budget Act of 1997.

Rule is necessary because of federal law, Section 1902 (n)(3)(B) of the Social Security Act, as modified by Section 4714 of the Balanced Budget Act of 1997.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, Legal and Administrative Services, Rules and Publications, (360) 725-1306; Implementation and Enforcement: Myra Davis, Financial Services-Rates, Pharmacy Unit, (360) 725-1847.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes 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.

May 22, 2013

Kevin M. Sullivan  
Rules Coordinator

### WSR 13-11-148

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed May 22, 2013, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-065.

Title of Rule and Other Identifying Information: WAC 182-530-7700 Reimbursement—Dual eligible clients/medicare.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on June 25, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 26, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th

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

**WAC 182-530-7700 Reimbursement—Dual eligible clients/medicare.** For clients who are dually eligible for medical assistance and medicare benefits, the following applies:

(1) Medicare Part B, the ~~((department))~~ agency pays providers for:

(a) An amount up to the ~~((department's))~~ agency's maximum allowable fee for drugs medicare does not cover, but the ~~((department))~~ agency covers; or

(b) Deductible and/or coinsurance amounts up to medicare's or the ~~((department's))~~ agency's maximum allowable fee, whichever is less, for drugs medicare and the ~~((department))~~ agency cover(~~(-or~~

~~(e) Deductible and/or coinsurance amounts for clients under the qualified medicare beneficiary (QMB) program for drugs medicare covers but the department does not cover).~~

(2) Medicare Part D:

~~(a) ((For payment of medicare Part D drugs:~~

~~(i)) Medicare is the ((primary)) payer for drugs covered under the medicare Part D ((drugs;~~

~~(ii)) benefit.~~

~~(b) The ((department)) agency does not pay((s only the copayment up to a maximum amount set by the Centers for Medicare and Medicaid Services (CMS); and~~

~~(iii) The client is responsible for copayments above the maximum amount)) for Part D drugs or Part D copayments.~~

~~((b)) (c) For drugs excluded from the basic medicare Part D benefit((s):~~

(i) The ~~((department))~~ agency offers the same drug benefit as a nondual eligible client has within those same classes;

(ii) If the client has another third party insurer, that insurer is the primary payer; and

(iii) The ~~((department))~~ agency is the payer of last resort.

### WSR 13-11-149

#### PROPOSED RULES

#### OFFICE OF

#### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-02—Filed May 22, 2013, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-03-140.

Title of Rule and Other Identifying Information: Open and special enrollment periods - health plans.

Hearing Location(s): Office of the Insurance Commissioner, Training Room (T-120), 5000 Capitol Way South, Tumwater, WA, on June 26, 2013, at 10:00 a.m.

Date of Intended Adoption: July 9, 2013.

Submit Written Comments to: Meg Jones, 5000 Capitol Way South, Tumwater, WA, e-mail [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax (360) 586-3109, by June 26, 2013.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by June 24, 2013, 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 are designed to align the exchange and off-exchange marketplaces to address the risk of adverse selection, and ensure that each issuer administers open and special enrollment periods for the individual and small group markets consistently.

Reasons Supporting Proposal: For small group plans, the option of conducting open enrollment is available to issuers; these proposed rules will standardize practices related to how open enrollment must be conducted if an issuer elects to do so for its small group offerings. In addition, federal law requires issuers to conduct a special annual enrollment period for small groups whose sponsor is unable to comply with a material plan provision relating to employer contribution or

group participation rules. These proposed rules would establish that requirement in our state code.

Beginning January 1, 2014, absent open enrollment requirements, health plan issuers must enroll all applicants at any time during the benefit year. Beginning October 1, 2013, and each October 1 thereafter, the health benefit exchange will conduct open enrollment for individual health plans offered on the exchange. The first year, open enrollment closes in March 2014; subsequently it will end in December of each year. This creates a risk of adverse selection for the off-exchange markets, someone with a specific health care need can enroll, receive the service, and disenroll, unless open enrollment periods are established that parallel the exchange's time frames. The proposed rules address this risk.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.120(2), 48.20.450, 48.43.0122, 48.43.720(3), 48.44.050, and 48.46.200.

Statute Being Implemented: RCW 48.18.120, 48.20.450, 48.20.500, 48.43.012, 48.43.015, 48.43.008, 48.43.035, 48.43.700, and 43.71.040.

Rule is necessary because of federal law, 45 C.F.R. 147.104; 45 C.F.R. 147.106; 45 C.F.R. 155.420; 45 C.F.R. 155.725.

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

Name of Agency Personnel Responsible for Drafting: Meg Jones, P.O. Box 40258, Olympia, WA, (360) 725-7170; Implementation: Beth Berendt, P.O. Box 40258, Olympia, WA, (360) 725-7117; and Enforcement: Leslie Krier, P.O. Box 40258, Olympia, WA, (360) 725-7216.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities affected by the rule do not meet the definition of small business.

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](mailto:rulescoordinator@oic.wa.gov).

May 22, 2013

Mike Kreidler

Insurance Commissioner

#### NEW SECTION

##### **WAC 284-170-400 Preexisting condition limitations.**

For health plans offered, issued or renewed on or after January 1, 2014, issuers must not condition or otherwise limit enrollment based on preexisting conditions.

#### NEW SECTION

##### **WAC 284-170-410 Open enrollment periods for small group health plans.**

(1) For purposes of this section, "open enrollment" means a specific period of time each year during which enrollment in a health benefit plan is permitted.

(2) For small group health plans offered on the health benefit exchange, an issuer must comply with the open enrollment period requirements for the dates of the open enrollment established by the health benefit exchange.



(3) For small group health plans offered off the health benefit exchange, the issuer may elect to limit enrollment to an open enrollment period. Such an open enrollment period must:

(a) Be a minimum of forty-five days in length;

(b) Apply in the same manner and with the same conditions to all plans the issuer offers in the off-exchange small group market. An issuer may not establish different open enrollment periods or requirements for specific health benefit plans;

(c) Begin at the same time as the individual market open enrollment period.

(4) If an issuer does not hold an open enrollment period for small group plans off the health benefit exchange, the issuer must permit qualified small groups to purchase coverage at any point during the year, and permit the small group an annual election period.

(5) If an issuer conducts an open enrollment period, the issuer must:

(a) Explain that fact prominently on its web site;

(b) Include on its web site information about special enrollment periods so that a consumer has the ability to access or request and receive an application packet for enrollment at any time. The displayed information must also include details written in plain language explaining what constitutes a qualifying event for special enrollment; and

(c) Promptly make application packets available to interested employers or plan sponsors upon request, even if the request is made outside the open enrollment periods.

#### NEW SECTION

**WAC 284-170-412 Required small group annual enrollment period.** (1) Nongrandfathered small group plans offered either on or off the health benefit exchange must be made available by an issuer during a special annual enrollment period for small groups whose plan sponsor is unable to comply with a material plan provision relating to employer contribution or group participation rules as required under 45 C.F.R. 147.104 (b)(1)(k) and 45 C.F.R. 147.106 (b)(3).

(2) The special annual small group enrollment period required by this section must begin November 15th and extend through December 15th of each year.

(3) If a small group plan is not renewed at its renewal date because an employer or plan sponsor does not meet an issuer's employer contribution or group participation requirements, and the renewal date is outside the special annual enrollment period in this section, an issuer must permit the employer or plan sponsor to enroll in any other group coverage for which it does meet the employer contribution or group participation requirements.

(4) At the time of nonrenewal of the plan for the reasons set forth in subsection (1) of this section, the issuer must notify the enrollees of the nonrenewed plan in writing that if the employer or plan sponsor does not identify an alternate small group plan, the enrollees have their special enrollment rights and options on or off the health benefit exchange based on loss of employer or group sponsored coverage.

(5) For any other situation in which a plan no longer offers benefits to the class of similarly situated individuals

that include the group's enrollees, the issuer must notify the enrollees in the plan of their special enrollment rights and options on or off the health benefit exchange.

#### NEW SECTION

**WAC 284-170-415 Special enrollment requirements for small group plans offered on the exchange.** If the health benefit exchange elects to require issuers to apply an open enrollment period for plans offered to small groups, an issuer must comply with the requirements of 45 C.F.R. 155.420 and 45 C.F.R. 155.725, in addition to applicable state laws and regulations.

#### NEW SECTION

**WAC 284-170-420 Special enrollment requirements for small group plans offered off the exchange.** (1) When an issuer uses an open enrollment period for small group plans offered off the health benefit exchange, the issuer must make special enrollment periods available to an otherwise eligible applicant if the applicant has experienced one of the qualifying events identified in this section.

(2) A qualifying event for special enrollment in plans offered on or off the health benefit exchange is:

(a) The loss, for any reason, of employer sponsored insurance coverage, or the individual or group coverage of a person under whose policy they were enrolled, unless the discontinuation is based on the individual's misrepresentation of a material fact affecting coverage or for fraud related to the discontinued health coverage;

(b) The loss of eligibility for medicaid or a public program providing health benefits;

(c) The loss of coverage as the result of dissolution of marriage or termination of a domestic partnership;

(d) A permanent change in residence, work, or living situation, whether or not within the choice of the individual, where the health plan under which they were covered does not provide coverage in that person's new service area;

(e) The birth, placement for adoption or adoption of the applicant for whom coverage is sought;

(f) A situation in which a plan no longer offers benefits to the class of similarly situated individuals that includes the applicant;

(g) Loss of individual or group coverage purchased on the health benefit exchange due to an error on the part of the exchange, the issuer or the U.S. Department of Health and Human Services.

(3) Nothing in this rule is intended to alter or affect the requirements of RCW 48.43.517.

(4) An issuer may require reasonable proof or documentation that an individual seeking special enrollment has experienced a qualifying event.

(5) An issuer must offer a special enrollee each benefit package available to members of the group who enrolled when first eligible. A special enrollee cannot be required to pay more for coverage than other members of the group who enrolled in the same coverage when first eligible. Any difference in benefits or cost-sharing requirements constitutes a different benefit package.

(6) An issuer must include detailed information about special enrollment options and rights in its health plan documents provided pursuant to WAC 284-43-820, and in any policy or certificate of coverage provided to an employer, plan sponsor, or enrollee. The notice must be substantially similar to the model notice provided by the U.S. Department of Labor or the U.S. Department of Health and Human Services.

(7) For children who experience a qualifying event, if the selected plan is not the plan on which the parent is then enrolled, or if the parent does not have coverage, the issuer must permit the parent to enroll when the child seeks enrollment for dependent coverage. An enrolling child must have access to any benefit package offered to employees, even if that requires the issuer to permit the parent to switch benefit packages.

#### NEW SECTION

**WAC 284-170-423 Duration and effective dates of small group coverage for special enrollment periods.** (1) This section applies to nongrandfathered small group plans offered both on or off the health benefit exchange.

(2) Special enrollment periods must not be shorter than sixty days from the date of the qualifying event.

(3) The effective date of coverage for those enrolling in a small group plan through a special enrollment period is the first date of the next month after the application for coverage is received, unless one of the following exceptions applies:

(a) For special enrollment of newborn, adopted or placed for adoption children, the date of birth, date of adoption or date of placement for adoption becomes the first effective date of coverage;

(b) For applicants enrolling after the fifteenth of the month, the issuer must begin coverage not later than the first date of the second month after the application is received, unless the applicant is enrolling due to marriage or the commencement of a domestic partnership. Such applicant's coverage must begin on the first date of the next month, regardless of when in the month the application is received.

#### NEW SECTION

**WAC 284-170-425 Individual market open enrollment requirements.** (1) For purposes of this section, "open enrollment" means a specific period of time each year during which enrollment in a health benefit plan is permitted.

(2) An issuer must limit the dates for enrollment in plans offered on the individual market off the health benefit exchange to the same time period for open enrollment established by the health benefit exchange.

(3) In addition to the open enrollment period established by the exchange, an issuer participating in the off-exchange individual market must hold an open enrollment period between March 15th and April 30th each year, making its child-only policies available to those under age nineteen.

(4) An issuer must prominently display information on its web site about open enrollment periods and special enrollment periods, applicable to its plans offered either on or off the health benefit exchange.

(a) The web site information about enrollment periods must provide a consumer with the ability to access or request and receive an application packet for enrollment at any time.

(b) The displayed information must include details written in plain language explaining what constitutes a qualifying event for special enrollment.

(5) For individual plans offered either on or off the health benefit exchange, an issuer must include detailed information about special enrollment options and rights in its health plan documents provided pursuant to WAC 284-43-820, and in the policy or certificate of coverage provided to an employer, plan sponsor or enrollee. The notice must be substantially similar to the model notice provided by the U.S. Department of Health and Human Services.

(6) Written notice of open enrollment must be provided to enrolled persons at some point between September 1st and September 30th of each year.

#### NEW SECTION

**WAC 284-170-428 Individual market special enrollment requirements.** (1) For a nongrandfathered individual health plan offered on or off the health benefit exchange, a carrier must make a special enrollment period of not less than sixty days available to any person who experiences a qualifying event, permitting enrollment in an individual health benefit plan outside the open enrollment period. This requirement applies to individual plans offered both on and off the health benefit exchange.

(2) A qualifying event means the occurrence of one of the following:

(a) The discontinuation for any reason of employer sponsored insurance coverage due to action by either the employer or the issuer or due to the individual's loss of eligibility for the employer sponsored coverage, or the discontinuation of the individual or group coverage of a person under whose policy they were enrolled, unless the discontinuation is based on the individual's misrepresentation of a material fact affecting coverage or for fraud related to the discontinued health coverage;

(b) The loss of eligibility for medicaid or a public program providing health benefits;

(c) The loss of coverage as the result of dissolution of marriage or termination of a domestic partnership;

(d) A permanent change in residence, work, or living situation, whether or not within the choice of the individual, where the health plan under which they were covered does not provide coverage in that person's new service area;

(e) The birth, placement for or adoption of the person for whom coverage is sought. For newborns, coverage must be effective from the moment of birth; for those adopted or placed for adoption, coverage must be effective from the date of adoption or placement for adoption, whichever occurs first;

(f) A situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual;

(g) Coverage is discontinued in a qualified health plan by the health benefit exchange pursuant to 45 C.F.R. 155.430

and the three month grace period for continuation of coverage has expired;

(h) Exhaustion of COBRA coverage due to failure of the employer to remit premium;

(i) Loss of COBRA coverage where the individual has exceeded the lifetime limit in the plan and no other COBRA coverage is available;

(j) If the person discontinues coverage under a health plan offered pursuant to chapter 48.41 RCW;

(k) Loss of coverage as a dependent on a group plan due to age, if a conversion plan is not available.

(3) If the special enrollee had prior coverage, an issuer must offer a special enrollee each of the benefit packages available to individuals who enrolled during the open enrollment period within the same metal tier or level at which the person was previously enrolled. Any difference in benefits or cost-sharing requirements for different individuals constitutes a different benefit package.

(a) A special enrollee cannot be required to pay more for coverage than a similarly situated individual who enrolls during open enrollment.

(b) An issuer may limit a special enrollee who was enrolled in a catastrophic plan as defined in RCW 48.43.005 (8) to the plans available during open enrollment at either the bronze or silver level.

(c) An issuer may restrict a special enrollee whose eligibility is based on their status as a dependent to the same metal tier for the plan on which the primary subscriber is enrolled.

(4) An issuer may require reasonable proof or documentation that an individual seeking special enrollment has experienced a qualifying event.

#### NEW SECTION

**WAC 284-170-430 Individual market special enrollment on the exchange.** (1) An issuer offering an individual plan on the health benefit exchange must make the special enrollment opportunities, subject to the same terms and conditions specified in WAC 284-170-428, available to applicants who experience a qualifying event.

(2) In addition to the special enrollment qualifying events set forth in WAC 284-170-428, the following special enrollment opportunities must be made available for individual plans offered on the health benefit exchange:

(a) Native Americans must be permitted to enroll or change from one qualified health plan to another qualified health plan one time per month;

(b) If the applicant lost prior coverage because a qualified health plan violated a material provision of the insurance contract, policy or certificate of coverage;

(c) If applicant lost prior coverage due to errors by the health benefit exchange staff or the U.S. Department of Health and Human Services;

(d) If the applicant seeks enrollment because they gained citizenship or acquired lawfully present status.

(3) An individual who experiences a qualifying event and whose prior coverage was on a catastrophic health plan as defined in RCW 48.43.005 (8)(c)(i) may be limited by the exchange to enrollment in a bronze or silver level plan.

(4) This section must not be interpreted or applied to preclude or limit the health benefit exchange's rights to automatically enroll qualified individuals based on good cause or as required by the U.S. Department of Health and Human Services.

#### NEW SECTION

**WAC 284-170-435 Duration and effective dates of coverage for individual market special enrollment periods.** (1) Special enrollment periods must not be shorter than sixty days.

(2) The effective date of coverage for those enrolling in an individual health plan through a special enrollment period is the first date of the next month after the premium is received by the issuer, unless one of the following exceptions applies:

(a) For those enrolling after the twentieth of the month, the issuer must begin coverage not later than the first date of the second month after the application is received;

(b) For special enrollment of newborn, adopted or placed for adoption children, the date of birth, date of adoption or date of placement for adoption, as applicable, becomes the first effective date of coverage;

(c) For special enrollment based on marriage or the beginning of a domestic partnership, and for special enrollment based on loss of minimum essential coverage, coverage must begin on the first day of the next month.

#### **WSR 13-11-150**

#### **PROPOSED RULES**

#### **PROFESSIONAL EDUCATOR**

#### **STANDARDS BOARD**

[Filed May 22, 2013, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-140.

Title of Rule and Other Identifying Information: Creates new section in chapter 181-01 WAC and amends WAC 181-01-001 and 181-01-002 in response to legislation permitting alternative assessments such as SAT and ACT test scores above the national average to meet admission requirements to preparation programs.

Hearing Location(s): Phoenix Inn, 415 Capitol Way North, Olympia, WA 98501, on July 30, 2013, at 8:30.

Date of Intended Adoption: July 30, 2013.

Submit Written Comments to: David Brenna, Old Capitol Building, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 23, 2013.

Assistance for Persons with Disabilities: Contact David Brenna by July 23, 2013, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Permits alternative assessments to the WEST B for admission purposes.

Reasons Supporting Proposal: Legislation HB 1178, Laws of 2013.

Statutory Authority for Adoption: RCW 28A.410.220.

Statute Being Implemented: RCW 28A.410.220.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, Old Capitol Building, 600 Washington, Olympia, WA 98504, (360) 725-6238.

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

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

May 22, 2013

David Brenna

Senior Policy Analyst

**AMENDATORY SECTION** (Amending WSR 07-09-058, filed 4/12/07, effective 5/13/07)

**WAC 181-01-001 WEST-B extension.** Candidates who are prepared and/or certified out-of-state applying for a Washington state residency teaching certificate under WAC 181-79A-257 (1)(b) or 181-79A-260 have up to one calendar year from issuance of temporary permit to pass the WEST-B basic skills test or present evidence of passing an alternative assessment per WAC 181-01-0025, provided that they have completed all other requirements for residency certification other than passage of the WEST-B and are thus eligible for a temporary permit under WAC 181-79A-128.

**AMENDATORY SECTION** (Amending WSR 12-04-032, filed 1/26/12, effective 2/26/12)

**WAC 181-01-002 WEST-B exemptions.** (1) Candidates who are prepared and/or certified out-of-state applying for a Washington state residency teaching certificate under WAC 181-79A-257 (1)(b) or 181-79A-260, or out-of-state candidates applying to masters-degree level teacher preparation programs residing outside of the state of Washington at time of application, in lieu of passing the WEST-B, may present evidence of passing an alternative assessment per WAC 181-01-0025, or may provide official documentation of scores on the Praxis I ((of 177 for the reading subtest, 176 for the mathematics subtest and 174 for the writing subtest, or scores on the Praxis I CBT computer-administered test of 325 for the reading subtest, 321 for the mathematics subtest, and 321 for the writing subtest, or passing scores from)) or the California ((or Oregon on the CBEST)) basic educational skills test (CBEST®) or the NES® Essential Academic Skills test which meet the minimum passing scores adopted by the professional educator standards board.

(2) Candidates applying for a Washington state residency or professional teaching certificate under WAC 181-79A-257 (1)(b) who hold a certificate through the National Board for Professional Teaching Standards are exempt from the WEST-B requirement.

## NEW SECTION

**WAC 181-01-0025 WEST-B alternatives.** Per RCW 28A.410.220 individuals seeking admission to a state approved educator preparation program may submit evidence of a score on an assessment deemed of equal rigor by the professional educator standards board, such as the SAT or ACT, in lieu of the WEST-B. Acceptable alternative assessments and scores shall be approved and posted by the board and be no lower than the national average for that assessment as set by the professional educator standards board. This section also applies to out-of-state candidates.

## WSR 13-11-151

### PROPOSED RULES

### OFFICE OF

### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-07—Filed May 22, 2013, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-055.

Title of Rule and Other Identifying Information: Communications equipment (specialty producers) rules.

Hearing Location(s): Training Room (T-120), 5000 Capitol Way South, Tumwater, WA, on June 26, 2013, at 9:00 a.m.

Date of Intended Adoption: July 1, 2013.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by June 25, 2013.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by June 25, 2013, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2012 legislative session revisions were made to chapter 48.120 RCW regarding the licensing of vendors offering insurance for communications equipment, now known as portable electronics. These changes were the result of uniform licensing guidelines being adopted by the National Association of Insurance Commissioner's producer licensing work group and input from the industry. The legislative amendments to chapter 48.120 RCW rendered many sections in chapter 284-17A WAC obsolete. These proposed rules will remove those obsolete WAC sections. A technical correction is proposed to WAC 284-24-080 also relative to the 2012 legislative amendments.

Reasons Supporting Proposal: Legislative amendments to chapter 48.120 RCW rendered many sections in chapter 284-17A WAC obsolete. A correction to WAC 284-24-080 is also necessary because of the 2012 legislative amendments.

Statutory Authority for Adoption: RCW 48.02.060 and 48.120.025.

Statute Being Implemented: Chapter 48.120 RCW.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule simply details the filing requirements and fees for application to be a specialty producer. As such this rule-making process is "a filing or relate process requirement for applying to an agency for a license or permit" as defined under RCW 34.05.310(4) and exempted from filing a small business economic impact statement under the provisions of RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule simply details the filing requirements and fees for application to be a specialty producer. As such it is categorized as a procedural rule under RCW 34.05.328 (5)(c)(i) and does not require the filing of a cost-benefit analysis.

May 22, 2013

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2012-26, filed 2/27/13, effective 7/1/13)

**WAC 284-17-001 Definitions.** For purposes of this chapter, unless the context requires otherwise:

(1) "Affiliation" is a type of appointment whereby a business entity authorizes an individual insurance producer or surplus line broker to represent it when conducting insurance business.

(2) "Business entity" has the meaning set forth in RCW 48.17.010(2) and includes a sole proprietorship having associated licensees authorized to act on its behalf in the business or trade name of the sole proprietorship.

(3) "Days" means calendar days including Saturday and Sunday and holidays, unless otherwise specified.

(4) "Electronic submission" or "submitted electronically" means submission of a licensing process by an applicant, licensee, insurer, or education provider by means of the commissioner's web site or a third-party licensing provider or other state agency.

(5) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

(6) "Home state" has the meaning set forth in RCW 48.17.010(4).

(7) "Insurer" has the meaning set forth in RCW 48.17.010(7).

(8) "Licensee" means a person licensed by the commissioner under Title 48 RCW to sell, solicit or negotiate insurance and includes adjusters and surplus line brokers.

(9) "Line of authority" means a license issued in one or more lines of insurance listed in RCW 48.17.170.

(10) "NAIC" means the National Association of Insurance Commissioners.

(11) "Third-party licensing provider" is designated on the commissioner's web site at: [www.insurance.wa.gov](http://www.insurance.wa.gov).

(12) "Reinstatement" means the reissuance by the commissioner of a license that was not renewed more than sixty days but fewer than twelve months after its expiration date.

(13) "Resident" means a person who has elected to make Washington his or her home state, or, in the case of a business entity, has a place of business in this state.

(14) "Sending written notice" or "sending a copy of the written notice" means transmitting the required information in writing and, where required, on forms designated by the commissioner for that purpose, via first class mail, commercial parcel delivery company, telefacsimile, or electronic transmission, unless a specific method of transmission is specified.

(15) "Specialty producer license—Portable electronics" means a license issued under RCW 48.120.010 that authorizes a vendor to offer or sell insurance as provided in RCW 48.120.015.

(16) "Surety" means that limited line of authority of insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust.

~~((16))~~ (17) "Travel insurance" means insurance coverage for personal risks incident to planned travel including, but not limited to:

- (a) Interruption or cancellation of trip or event;
- (b) Loss of baggage or personal effects;
- (c) Damages to accommodations or rental vehicles; or
- (d) Sickness, accident, disability, or death occurring during limited duration travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, including those working overseas as an expatriate or military personnel being deployed.

~~((17))~~ (18) "Travel insurance producer" means a licensed limited lines producer of travel insurance.

~~((18))~~ (19) "Travel retailer" means a business entity that offers and disseminates travel insurance on behalf of and under the direction and supervision of a licensed travel insurance producer.

~~((19))~~ (20) "Written" or "in writing" means any retrievable method of recording an agreement or document, and, unless otherwise specified, includes paper and electronic formats.

#### NEW SECTION

**WAC 284-17-035 Specialty producer license—Portable electronics.** Forms and instructions may be obtained from the licensing section of the office of insurance commissioner.

To apply for a specialty producer license—Portable electronics, the following items must be submitted to the licensing section of the office of the insurance commissioner:

(1) An application signed by the applicant, or an officer of the applicant, including the following:

- (a) Applicant's name;
- (b) If an entity, the type of entity and the name of the supervising person, as defined in RCW 48.120.005(9);
- (c) Address for its principal place of business;
- (d) A copy of its articles of incorporation; and
- (e) A certificate of good standing from the secretary of state.

(2) An appointment as a licensed insurance producer completed by each authorized insurer(s) authorizing the applicant to represent the insurer.

(3) An affiliation completed by the applicant authorizing the supervising person to represent the applicant. The supervising person must be a licensed insurer or a licensed insurance producer under RCW 48.17.060.

(4) Fees:

- License fee \$500
- Appointment fee \$20 each
- Affiliation fee \$20

NEW SECTION

**WAC 284-17-046 Specialty producer license—Portable electronics renewal process.** (1) A renewal notice will be mailed to each licensed specialty producer in May for renewal by July 1st of each year.

(2) The completed renewal notice and two hundred fifty dollar renewal fee must be received by the office of the insurance commissioner by July 1st.

(3) If the completed renewal notice and the two hundred and fifty dollar fee is not received by the commissioner prior to July 1st, the applicant must pay, in addition to the renewal fee, a surcharge as follows:

- (a) One to thirty days late, the surcharge is fifty percent of the renewal fee;
- (b) Thirty-one to sixty days late, the surcharge is one hundred percent of the renewal fee;
- (c) Sixty-one days after the expiration date of the license but prior to twelve months, the license must be reinstated and the applicant must pay the renewal fee plus a surcharge of two hundred percent of the renewal fee.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 284-17A-010 Do I need to be licensed as a specialty producer?
- WAC 284-17A-020 What definitions are important throughout the chapter?
- WAC 284-17A-030 How do I apply for specialty producer license?
- WAC 284-17A-040 How do I renew the license?
- WAC 284-17A-050 What information must I provide to prospective customers?

- WAC 284-17A-060 What is included in the written material?
- WAC 284-17A-070 Do I need to provide training to my employees?
- WAC 284-17A-080 What are the requirements for the accounting of premiums?
- WAC 284-17A-090 Does the commissioner have authority to suspend, fine, or revoke my license or refuse to license me?
- WAC 284-17A-100 What is the effective date of this rule?

AMENDATORY SECTION (Amending Matter No. 2007-11, filed 10/15/08, effective 2/1/09)

**WAC 284-24-080 Rate filings rule for inland marine risks.** Under RCW 48.19.030 and 48.19.070, insurers are not required to file rates with the commissioner for certain inland marine risks that are not written according to manual rates or rating plans. The following inland marine classes of risks, which are characterized by large numbers of insureds and homogeneous loss exposure, are written according to manual rates or rating plans and must be filed under chapter 48.19 RCW. Manual rates, classification or rating plans that apply to the following types of risks must be filed with the commissioner:

- (1) Accounts receivable coverage;
- (2) Agricultural machinery, farm equipment and livestock coverage;
- (3) Bicycle floater;
- (4) Boatowners' insurance or coverage for pleasure boats twenty-six feet and under in length;
- (5) Camera floater;
- (6) Camera and musical instrument dealers;
- (7) Commercial articles coverage (photographic equipment and musical instruments);
- (8) ~~((Communications equipment, including cell phones, pagers, and portable personal computers;~~
- ~~((9)))~~ Equipment dealers coverage;
- ~~((10)))~~ (9) Film coverage form;
- ~~((11)))~~ (10) Fine arts private collections;
- ~~((12)))~~ (11) Floor plan merchandise coverage;
- ~~((13)))~~ (12) Fur dealers;
- ~~((14)))~~ (13) Hardware dealers;
- ~~((15)))~~ (14) Implement dealers;
- ~~((16)))~~ (15) Garment contractors;
- ~~((17)))~~ (16) Golfer's equipment floater;
- ~~((18)))~~ (17) Jewelry dealers;
- ~~((19)))~~ (18) Mail coverage;
- ~~((20)))~~ (19) Personal articles floater;
- ~~((21)))~~ (20) Personal effects floater;
- ~~((22)))~~ (21) Personal furs or fur floater;
- ~~((23)))~~ (22) Personal jewelry or jewelry floater;
- ~~((24)))~~ (23) Personal property floater;
- ~~((25)))~~ (24) Physicians' and surgeons' equipment coverage;

- (25) Portable electronics as defined in RCW 48.120.005;
- (26) Signs coverage;
- (27) Silverware floater;
- (28) Stamp and coin collection floater;
- (29) Travel coverage other than accident and sickness;
- (30) Valuable papers and records; and
- (31) Wedding presents.