

WSR 13-12-073
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 5, 2013, 8:51 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 references: WAC 388-446-0001, 388-450-0005, 388-450-0030, 388-450-0035, 388-450-0045, 388-450-0055, 388-450-0065, 388-450-0070, 388-450-0080, 388-450-0085, 388-450-0105, 388-450-0106, 388-450-0116, 388-450-0155, 388-450-0160, 388-450-0200, 388-450-0215, 388-455-0005, 388-455-0010, and 388-455-0015.

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 July 23, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 24, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on July 23, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 2, 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 community service division is proposing to amend the above rules to remove medical references from fraud, income, educational benefits, gifts, and resources sections. These changes are necessary as the health care authority (HCA) is amending, repealing, or creating medical assistance program 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."

April 24, 2013
Katherine I. Vasquez
Rules Coordinator

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

WAC 388-446-0001 When does the department refer a cash(☹) or food assistance ((~~or-medical~~)) case for prosecution for fraud? (1) We consider it fraud if you misrepresent your circumstances in order to be eligible for or to receive more benefits than you would receive based on your actual circumstances. This includes misrepresenting:

- (a) Who is in the household;
- (b) The income of people in your assistance unit;
- (c) Your living expenses; or
- (d) Other circumstances that impact your eligibility and monthly benefits.

(2) We suspect fraud if it appears that you received more benefits than you should have and it appears that you:

- (a) Made an intentional misstatement about your circumstances that caused the incorrect benefits; or
- (b) Intentionally failed to reveal information that impacts your eligibility.

(3) If we receive a report of fraud, we actively investigate the circumstances to determine if there is substantial evidence to support a finding of fraud. This includes referring the case for investigation by the office of fraud and accountability.

(4) If we have substantial evidence to support a finding of fraud for cash(☹) or food assistance ((~~or-medical~~)), we refer the case for prosecution. The prosecuting attorney's office decides which cases they will pursue for prosecution.

AMENDATORY SECTION (Amending WSR 06-07-078, filed 3/13/06, effective 5/1/06)

WAC 388-450-0005 How does the department decide if I own a type of income and if this income is available to meet my needs? This section applies to cash assistance(☹~~medical programs for children, pregnant women and families~~) and food assistance.

(1) We count all available income owned or held by people in your assistance unit under chapter 388-408 WAC to decide if you are eligible for benefits and calculate your monthly benefits when:

- (a) You get or expect to get the income in the month.
- (b) We must count the income based on rules under chapter 388-450 WAC.

(c) You own the income. We use state and federal laws about who owns property to decide if you actually own the income. If you are married, we decide if income is separate or community income according to chapter 26.16 RCW.

(d) You have control over the income, which means the income is actually available to you. If you have a representative payee, protective payee, or other person who manages your income for you as described in chapter 388-460 WAC, we consider this as you having control over this income.

(e) You can use the income to meet your current needs. We count the gross amount of available income in the month your assistance unit gets it. If you normally get the income:

(i) On a specific day, we count it as available on that date.

(ii) Monthly or twice monthly and your pay date changes due to a reason beyond your control, such as a weekend or holiday, we count it in the month you would normally get it.

(iii) Weekly or every-other week and your pay date changes due to a reason beyond your control, we count it in the month you would normally get it.

(2) If income is legally yours, we consider the income as available to you even if it is paid to someone else for you. For example, the father of your child has a court order to pay you two hundred fifty dollars per month in child support. Instead of giving the money directly to you (as required in the court order), he gives the money to your landlord to pay part of your rent. We still count the two hundred fifty dollars as income even though you never actually got the money.

(3) We may also count the income of certain people who live in your home, even if they are not getting or applying for benefits. Their income counts as part of your income.

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

(b) For food assistance, we count the income of ineligible assistance unit members as defined in WAC 388-408-0035.

~~((c) For family and SSI-related medical assistance, we count the income of financially responsible people as defined in WAC 388-408-0055 and chapter 388-475 WAC.~~

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

(4) If you have a joint bank account with someone who is not in your AU, we count any money deposited into that account as your income unless:

(a) You can show that all or part of the funds belong **only** to the other account holder and are held or used **only** for the benefit of that holder; or

(b) Social Security Administration (SSA) used that money to determine the other account holder's eligibility for SSI benefits.

(5) Potential income is income you may be able to get that can be used to lower your need for assistance. If we determine that you have a potential source of income, you must make a reasonable effort to make the income available in order to get cash ~~((or medical))~~ assistance.

(a) We do not count that income until you actually get it; and

(b) You can choose whether to get TANF/SFA or supplemental security income (SSI) benefits.

(6) If your assistance unit includes a sponsored immigrant, we consider the income of the immigrant's sponsor as available to the immigrant under the rules of this chapter. We use this income when deciding if your assistance unit is eligible for benefits and to calculate your monthly benefits.

~~(7) ((For SSI-related medical:~~

~~(a) We consider income to be owned by someone and available to the person when the person:~~

~~(i) Gets the income; and~~

~~(ii) Can use the income to meet their needs for food, clothing and shelter, except as provided in WAC 388-511-1130.~~

~~(b) Loans and getting cash in certain other ways are not defined as income for SSI-related medical purposes as described in 20 C.F.R. Sec. 416.1103.~~

~~(8) For medical programs, see WAC 388-561-0100 for more information about trusts.~~

~~(9))~~ You may give us proof about a type of income at anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns the income;

(b) Who has legal control of the income;

(c) The amount of the income; or

(d) If the income is available.

AMENDATORY SECTION (Amending WSR 02-20-069, filed 9/30/02, effective 10/31/02)

WAC 388-450-0030 What is earned income? This section applies to cash assistance~~((;))~~ and food assistance~~((; and medical programs for families, children, and pregnant women))~~.

(1) Earned income money you get from working. This includes:

(a) Wages;

(b) Tips;

(c) Commissions;

(d) Profits from self-employment activities as described in WAC 388-450-0080; and

(e) One-time payments for work you did over a period of time.

(2) For cash ~~((and medical))~~ assistance, we also consider you to have earned income if you work for something other than money, such as your rent.

(3) When we count your earned income, we count the amount you get before any taxes are taken out.

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

WAC 388-450-0035 Educational benefits. This section applies to cash assistance~~((; medical programs for children, pregnant women and families;))~~ and food assistance.

(1) We do not count:

(a) Educational assistance in the form of grants, loans or work study, issued from Title IV of the Higher Education Amendments (Title IV - HEA) and Bureau of Indian Affairs (BIA) education assistance programs. Examples of Title IV -

HEA and BIA educational assistance include but are not limited to:

- (i) College work study (federal and state);
- (ii) Pell grants; and
- (iii) BIA higher education grants.

(b) Educational assistance in the form of grants, loans or work-study made available under any program administered by the Department of Education (DOE) to an undergraduate student. Examples of programs administered by DOE include, but are not limited to:

- (i) Christa McAuliffe Fellowship Program;
- (ii) Jacob K. Javits Fellowship Program; and
- (iii) Library Career Training Program.

(2) For assistance in the form of grants, loans or work-study under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. ((401-391)) 101-392:

(a) If you are attending school half-time or more, we subtract the following expenses:

- (i) Tuition;
- (ii) Fees;
- (iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study;
- (iv) Books;
- (v) Supplies;
- (vi) Transportation;
- (vii) Dependent care; and
- (viii) Miscellaneous personal expenses.

(b) If you are attending school less than half-time, we subtract the following expenses:

- (i) Tuition;
- (ii) Fees; and

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study.

(c) For cash assistance ((~~and medical programs for children, pregnant women and families~~)), we also subtract the difference between the appropriate need standard and payment standard for your family size.

(d) Any remaining income is unearned income and budgeted using the appropriate budgeting method for the assistance unit.

(3) If you are participating in WorkFirst work study, that work study income is:

- (a) Not counted for cash ((~~and medical~~)) assistance;
- (b) Counted as earned income for food assistance.

(4) If you are participating in a work study program that is not excluded in subsection (1), of this section, we count that work study income as earned income:

- (a) You get any applicable earned income disregards;

(b) For cash assistance, ((~~and medical programs for children, pregnant women and families~~)) we also subtract the difference between the need standard and payment standard for your family size as described in chapter 388-478 WAC; and

(c) Budgeting remaining income using the appropriate budgeting method for the assistance unit.

(5) If you get Veteran's Administration Educational Assistance:

- (a) All applicable attendance costs as subtracted; and

(b) The remaining unearned income is budgeted using the appropriate budgeting method for the assistance unit.

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

WAC 388-450-0045 How do we count income from employment and training programs? This section applies to cash assistance((;)) ~~and Basic Food((;and medical programs for families, children, and pregnant women))~~.

(1) We treat payments issued under the Workforce Investment Act (WIA) as follows:

(a) For cash assistance ((~~and medical programs for families, children, and pregnant women~~)), we exclude all payments.

(b) For Basic Food:

(i) We exclude OJT earnings for children who are eight years of age or younger and under parental control as described in WAC 388-408-0035.

(ii) We count OJT earnings as earned income for people who are:

(A) Age nineteen and older; or

(B) Age eighteen or younger and not under parental control.

(iii) We exclude all other payments.

(2) We exclude **all** payments issued under the National and Community Service Trust Act of 1993. This includes payments made through the AmeriCorps program.

(3) We treat payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps Vista, university year for action, and urban crime prevention program as follows:

(a) For cash assistance ((~~and medical programs for families, children, and pregnant women~~)), we exclude all payments.

(b) For Basic Food, we count most payments as earned income. We exclude the payments if you:

(i) Received Basic Food or cash assistance at the time you joined the Title I program; or

(ii) Were participating in the Title I program and received an income disregard at the time of conversion to the Food Stamp Act of 1977. We continue to exclude the payments even if you do not get Basic Food every month.

(4) We exclude **all** payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

(a) Retired senior volunteer program (RSVP);

(b) Foster grandparents program; and

(c) Senior companion program.

(5) We count training allowances from vocational and rehabilitative programs as earned income when:

(a) The program is recognized by federal, state, or local governments; and

(b) The allowance is not a reimbursement.

(6) We exclude support service payments received by or made on behalf of WorkFirst participants.

AMENDATORY SECTION (Amending WSR 06-04-071, filed 1/30/06, effective 3/2/06)

WAC 388-450-0055 How does needs-based assistance from other agencies or organizations count against

my benefits? (1) For cash assistance (~~and medical programs for children, pregnant women, and families~~):

(a) We do not count needs-based assistance payments given to you by other agencies or organizations if the assistance is given to you for reasons other than ongoing living expenses which do not duplicate the purpose of cash assistance programs. Ongoing living expenses include the following items:

- (i) Clothing;
- (ii) Food;
- (iii) Household supplies;
- (iv) Medical supplies (nonprescription);
- (v) Personal care items;
- (vi) Shelter;
- (vii) Transportation; and
- (viii) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(b) If the needs-based assistance given to you is supposed to be used for ongoing living expenses, then it duplicates the purpose of cash assistance programs. We count the amount remaining after we subtract the difference between the need standard and the payment standard for your family size as described in chapter 388-478 WAC.

(c) "Needs-based" means eligibility is based on an asset test of income and resources relative to the federal poverty level (FPL). This definition excludes such incomes as retirement benefits or unemployment compensation which are not needs-based.

(2) For food assistance:

- (a) We do not count money given to you if:
 - (i) It is given to you by a private, nonprofit, charitable agency or organization; and
 - (ii) The amount of money you get is no more than three hundred dollars in any one of the following calendar quarters:
 - (A) January - February - March,
 - (B) April - May - June,
 - (C) July - August - September,
 - (D) October - November - December.

(b) We count the entire amount if the requirements in (a) of this subsection are not met.

(3) For cash assistance(~~(;)~~) and food assistance, (~~and medical programs for children, pregnant women, and families~~;) if we do count the needs-based assistance you get, we treat it as unearned income under WAC 388-450-0025.

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

WAC 388-450-0065 Gifts—Cash and noncash. A gift is an item furnished to a client without work or cost on his or her part.

(1) A cash gift is a gift that is furnished as money, cash, checks or any other readily negotiable form.

(a) For cash assistance (~~and medical programs for children, pregnant women and families~~), cash gifts totaling no more than thirty dollars per calendar quarter for each assistance unit member are disregarded as income.

(b) For food assistance programs:

(i) Cash gifts to the assistance unit are excluded if they total thirty dollars or less per quarter;

(ii) Cash gifts in excess of thirty dollars per quarter are counted in full as unearned income.

(2) For cash assistance (~~and medical programs for children, pregnant women and families~~;) and food assistance, a noncash gift is treated as a resource.

(a) If the gift is a countable resource, its value is added to the value of the client's existing countable resources and the client's eligibility is redetermined as specified in chapter 388-470 WAC.

(b) If the gift is an excluded or noncountable resource, it does not affect the client's eligibility or benefit level.

AMENDATORY SECTION (Amending WSR 02-03-020, filed 1/4/02, effective 2/1/02)

WAC 388-450-0070 How do we count the earned income of a child? (1) For food assistance (~~and medical programs for families, children, and pregnant women~~), we do not count the earnings of a child if the child is:

- (a) In school;
- (b) Age seventeen or younger;
- (c) Not married; and
- (d) Not emancipated.

(2) For cash assistance, we do not count the earnings of a child if the child is:

- (a) In school; and
- (b) Meets the age and attendance requirements in WAC 388-404-0005.

(3) School includes:

- (a) Participating in a home-school program that is approved by the superintendent of public instruction; or
- (b) On break between school terms when the child:
 - (i) Was enrolled during the previous school term; and
 - (ii) Plans to return to school when it reopens.

~~((4) For medical programs, if we count the earnings of the child, we put the child in a separate MAU as described in WAC 388-408-0055.))~~

AMENDATORY SECTION (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

WAC 388-450-0080 What is self-employment income? This section applies to cash assistance(~~(;)~~) and Basic Food(~~(; and medical programs for children, pregnant women and families)~~).

(1) Self-employment income is income you earn from running a business, performing a service, selling items you make, or reselling items to make a profit.

(2) You are self-employed if you earn income without having an employer/employee relationship with the person who pays you. This includes, but is not limited to, when:

- (a) You have primary control of the way you do your work; or
- (b) You report your income using IRS Schedule C, Schedule C-EZ, Schedule K-1, or Schedule SE.

(3) You usually have an employer/employee relationship when:

- (a) The person you provide services for has primary control of how you do your work; or
- (b) You get an IRS form W-2 to report your income.

(4) Your self-employment does not have to be a licensed business for your business or activity to qualify as self-employment. Some examples of self-employment include:

- (a) Child care that requires a license under chapter 74.15 RCW;
- (b) Driving a taxi cab;
- (c) Farming/fishing;
- (d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;
- (e) Running a lodging for roomers and/or boarders. Roomer income includes money paid to you for shelter costs by someone not in your assistance unit who lives with you when:
 - (i) You own or are buying your residence; or
 - (ii) You rent all or a part of your residence and the total rent you charge all others in your home is more than your total rent.
- (f) Running an adult family home;
- (g) Providing services such as a massage therapist or a professional escort;
- (h) Retainer fees to reserve a bed for a foster child;
- (i) Selling items you make or items that are supplied to you;
- (j) Selling or donating your own biological products such as providing blood or reproductive material for profit;
- (k) Working as an independent contractor; and
- (l) Running a business or trade either on your own or in a partnership.

(5) ~~((For medical programs, we do not count receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources as self-employment income (such as fishing, shell-fishing, or selling timber from protected tribal land). We count this as conversion of a resource. See WAC 388-450-0040.~~

~~((6))~~ If you are an employee of a company or person who does the activities listed in subsection (2) above as a part of your job, we do not count the work you do as self-employment.

~~((7))~~ (6) Self-employment income is counted as earned income as described in WAC 388-450-0030 except as described in subsection ~~((8))~~ (7).

~~((8))~~ (7) For cash assistance and Basic Food there are special rules about renting or leasing out property or real estate that you own.

(a) We count the income you get as unearned income unless you spend at least twenty hours per week managing the property.

(b) For TANF/SFA, we count the income as unearned income unless the use of the property is a part of your approved individual responsibility plan.

AMENDATORY SECTION (Amending WSR 08-15-010, filed 7/3/08, effective 8/3/08)

WAC 388-450-0085 Does the department count all of my self-employment income to determine if I am eligible for benefits? This section applies to cash assistance~~((;))~~ and Basic Food~~((; and medical programs for children, pregnant women, and families))~~ programs.

~~((For cash, Basic Food, and family medical programs))~~:

(1) We decide how much of your self-employment income to count by:

- (a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment;
- (b) Subtracting your business expenses as described in subsection (2) below; and
- (c) Dividing the remaining amount of self-employment income by the number of months over which the income will be averaged.

(2) We subtract one hundred dollars as a business expense even if your costs are less than this. If you want us to subtract your actual costs of more than one hundred dollars, you must list and give us proof of your expenses for us to count them. We never allow the following expenses:

- (a) Federal, state, and local income taxes;
- (b) Money set aside for retirement purposes;
- (c) Personal work-related expenses (such as travel to and from work);
- (d) Net losses from previous periods;
- (e) Depreciation; or
- (f) Any amount that is more than the payment you get from a boarder for lodging and meals.

(3) If you have worked at your business for less than a year, we figure your gross self-employment income by averaging:

- (a) The income over the period of time the business has been in operation; and
- (b) The monthly amount we estimate you will get for the coming year.

(4) For cash ~~((and medical))~~ assistance, if your self-employment expenses are more than your self-employment income, we do not use this "loss" to reduce income from other self-employment businesses or other sources of income to your assistance unit.

(5) For Basic Food, we use a "loss" from self-employment farming or fishing income to reduce other sources of income **only** if you meet the following three conditions:

- (a) Someone in your assistance unit is a self-employed farmer or fisher;
- (b) Your gross yearly income from farming or fishing is or is expected to be at least one thousand dollars; and
- (c) Your allowable costs for farming or fishing are more than your income from farming or fishing.

~~((For children's and pregnancy medical programs:~~

~~(6) If you have worked long enough at the business to file a federal tax return last year and it represents your current income, we figure your gross self-employment income by:~~

~~(a) Adding together your gross self-employment income from your return and any profit you make from selling your business property or equipment;~~

~~(b) Subtracting your allowable business expenses except as described in subsection (2) above; and~~

~~(c) Averaging the income over the period the income covers.~~

~~(7) If you have worked at your business for less than a year or if you did not file a federal tax return in the last year~~

~~and, the business records represent your current income, we figure your gross self-employment income by:~~

~~(a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment over the period of time the business has been in operation within the last year;~~

~~(b) Subtracting your allowable business expenses except as described in subsection (2) above; and~~

~~(c) Averaging the income we estimate you will get for the coming year.)~~

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

WAC 388-450-0105 Allocating the income of a financially responsible person included in the assistance unit. This section applies to TANF/SFA(~~(;)~~) and RCA(~~(; and RMA)~~). ~~((Refer to WAC 388-408-0055 for the rules concerning the treatment of income of financially responsible person for medical programs.))~~ The income of a financially responsible person included in the assistance unit is countable to meet the needs of the assistance unit after the income is reduced by the following:

(1) Any applicable earned income incentive and work expense or deduction for the financially responsible person in the assistance unit, if that person is employed;

(2) The payment standard amount for the ineligible assistance unit members living in the home; and

(3) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents.

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

WAC 388-450-0106 How does the department count my income if someone in my family cannot get assistance because of their alien status? This section applies to TANF/SFA(~~(;)~~) and RCA(~~(; and RMA)~~). ~~((We count your income differently if you are applying for medical assistance only. See WAC 388-408-0055.))~~

If you are included in the assistance unit and you are financially responsible for someone, as defined in WAC 388-450-0100, who does not meet the alien requirements described in WAC 388-424-0010, we do not count all of your income. We subtract some of it so that you can use that part to help support the people who cannot get assistance. To figure out how much we count, we take the following seven steps:

(1) We start by only counting fifty percent of your earned income, as defined in WAC 388-450-0030;

(2) We add all of your unearned income, as defined in WAC 388-450-0025.

(3) We subtract the difference between the following payment standards (payment standards can be found in WAC 388-478-0020):

(a) One that includes both eligible assistance unit members and those who cannot get assistance because of their alien status; and

(b) One that includes only the eligible assistance unit members.

(4) We subtract the payment standard for the number of people who are ineligible for reasons other than alien status, as defined in WAC 388-450-0100 (4)(b) through (f).

(5) We subtract any court or administratively ordered child support you pay for legal dependents. This includes both current and back support. The amount cannot be more than the need standard in WAC 388-478-0015 for the number of dependents.

(6) We subtract any employment-related child care expenses you have.

(7) Then, we count whatever is left as unearned income.

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

WAC 388-450-0116 How does the department count my income if I cannot get assistance because I am an alien? This section applies to TANF/SFA(~~(;)~~) and RCA(~~(; and RMA)~~) programs. ~~((We count your income differently if you are applying for medical assistance only. See WAC 388-408-0055.))~~

Some people cannot get assistance because they do not meet the alien requirements described in WAC 388-424-0010. If you do not meet those requirements but you are financially responsible for someone in the assistance unit, as defined in WAC 388-450-0100, we count some of your income as part of the assistance unit's income. To figure out how much we count, we take the following seven steps:

(1) We start by only counting fifty percent of your earned income, as described in WAC 388-450-0030.

(2) We add all of your unearned income, as described in WAC 388-450-0025.

(3) We subtract the difference between the following payment standards:

(a) One that includes both eligible assistance unit members and those who cannot get assistance because of their alien status; and

(b) One that includes only the eligible assistance unit members.

(4) We subtract the payment standard for the number of people who are ineligible for reasons other than alien status, as defined in WAC 388-450-0100 (4)(b) through (f).

(5) We subtract any court or administratively ordered child support you pay for legal dependents. This includes both current and back support. The amount cannot be more than the need standard in WAC 388-478-0005 for the number of dependents.

(6) We subtract any employment-related childcare expenses you have.

(7) Then, we count whatever is left as unearned income.

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

WAC 388-450-0155 How does being a sponsored immigrant affect my eligibility for cash(~~(; medical;))~~ and food assistance programs? (1) The following definitions apply to this section:

(a) "INS" means the United States Immigration and Naturalization Service.

(b) **"Sponsor"** means a person who agreed to meet the needs of a sponsored immigrant by signing an INS Affidavit of Support form I-864 or I-864A. This includes a sponsor's spouse if the spouse signed the affidavit of support.

(c) **"Sponsored immigrant"** means a person who must have a sponsor under the Immigration and Nationality Act (INA) to be admitted into the United States for residence.

(d) **"Deeming"** means the department counts a part of the sponsor's income and resources as available to the sponsored immigrant.

(e) **"Exempt"** means you meet one of the conditions of WAC 388-450-0156. If you are exempt:

(i) You do not need to provide us information about your sponsor's income and resources; and

(ii) We do not deem your sponsor's income or resources to you.

(2) If you are a sponsored immigrant and you are **not** exempt, you must do the following to be eligible for benefits even if your sponsor is not supporting you:

(a) Give us the name and address of your sponsor;

(b) Get your sponsor to provide us the information we need about their income and resources; and

(c) Give us the information and proof we need to decide:

(i) If we must deem income to your assistance unit (AU); and

(ii) The amount of income we deem to your AU.

(3) If you are not eligible for benefits because we do not have the information we need about your sponsor, we do not delay benefits to the unsponsored people in your AU who are eligible for benefits. We do not count your needs when we decide if your AU is eligible for benefits, but we count:

(a) All earned or unearned income you have that is not excluded under WAC 388-450-0015; and

(b) All deductions you would be eligible for under chapter 388-450 WAC.

(4) If you refuse to provide us with the information we need about your sponsor, the other adult members in your AU must provide the information. If the same person sponsored everyone in your AU, your AU is not eligible for benefits until someone in your AU provides us the information we need.

(5) If you are an ineligible member of your AU, but you must be the AU under chapter 388-408 WAC, we do not deem your sponsor's income or resources to the AU.

AMENDATORY SECTION (Amending WSR 10-15-043, filed 7/13/10, effective 8/1/10)

WAC 388-450-0160 How does the department decide how much of my sponsor's income to count against my benefits? (1) We must count some of your sponsor's income as unearned income to your assistance unit (AU) if:

(a) Your sponsor signed the INS affidavit of support form I-864 or I-864A; and

(b) You are not exempt from the deeming process under WAC 388-450-0156.

(2) We take the following steps to decide the monthly amount of your sponsor's income we deem as your income and count against your benefits:

(a) We start with your sponsor's earned and unearned income that is not excluded under WAC 388-450-0015;

(b) If your sponsor's spouse signed the affidavit of support, we add all of the spouse's earned and unearned income that is not excluded under WAC 388-450-0015;

(c) We subtract twenty percent of the above amount that is earned income under WAC 388-450-0030;

(d) For cash (~~and medical~~) assistance, we subtract the need standard under WAC 388-478-0015. We count the following people who live in your sponsor's home as a part of your sponsor's AU to decide the need standard:

(i) Your sponsor;

(ii) Your sponsor's spouse; and

(iii) Everyone else in their home that they could claim as a dependent for federal income tax purposes.

(e) For food assistance, we subtract the maximum gross monthly income under WAC 388-478-0060. We count the following people that live in your sponsor's home as a part of your sponsor's AU to decide the maximum gross monthly income:

(i) Your sponsor;

(ii) Your sponsor's spouse; and

(iii) Everyone else in their home that they could claim as a dependent for federal income tax purposes.

(f) 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 including any member of your household that is exempt from deeming according to WAC 388-450-0156.

(3) After we have decided how much income to deem to you, we count the greater amount of the following against your benefits:

(a) The amount of income calculated from deeming; or

(b) The amount of money your sponsor actually gives you for your needs.

AMENDATORY SECTION (Amending WSR 08-15-054, filed 7/14/08, effective 8/14/08)

WAC 388-450-0200 Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for Basic Food? (1) If your basic food assistance unit (AU) includes an elderly person or individual with a disability as defined in WAC 388-400-0040, your AU may be eligible for an income deduction for that person's out-of-pocket medical expenses. We allow the deduction for medical expenses over thirty-five dollars each month.

(2) You can use an out-of-pocket medical expense toward this deduction if the expense covers services, supplies, medication, or other medically needed items prescribed by a state-licensed practitioner or other state-certified, qualified, health professional. Examples of expenses you can use for this deduction include those for:

(a) Medical, psychiatric, naturopathic physician, dental, or chiropractic care;

(b) Prescribed alternative therapy such as massage or acupuncture;

(c) Prescription drugs;

(d) Over the counter drugs;

- (e) Eye glasses;
- (f) Medical supplies other than special diets;
- (g) Medical equipment or medically needed changes to your home;
- (h) Shipping and handling charges for an allowable medical item. This includes shipping and handling charges for items purchased through mail order or the internet;
- (i) Long distance calls to a medical provider;
- (j) Hospital and outpatient treatment including:
 - (i) Nursing care; or
 - (ii) Nursing home care including payments made for a person who was an assistance unit member at the time of placement.
- (k) Health insurance premiums paid by the person including:
 - (i) Medicare premiums; and
 - (ii) Insurance deductibles and copayments.
- (l) Out-of-pocket expenses used to meet a spenddown as defined in WAC ~~((388-519-0010))~~ 182-519-0010. We do not allow your entire spenddown obligation as a deduction. We allow the expense as a deduction as it is estimated to occur or as the expense becomes due;
 - (m) Dentures, hearing aids, and prosthetics;
 - (n) Cost to obtain and care for a seeing eye, hearing, or other specially trained service animal. This includes the cost of food and veterinarian bills. We do not allow the expense of food for a service animal as a deduction if you receive ongoing additional requirements under WAC 388-473-0040 to pay for this need;
 - (o) Reasonable costs of transportation and lodging to obtain medical treatment or services; and
 - (p) Attendant care necessary due to age, infirmity, or illness. If your AU provides most of the attendant's meals, we allow an additional deduction equal to a one-person allotment.
- (3) There are two types of deductions for out-of-pocket expenses:
 - (a) One-time expenses are expenses that cannot be estimated to occur on a regular basis. You can choose to have us:
 - (i) Allow the one-time expense as a deduction when it is billed or due;
 - (ii) Average the expense through the remainder of your certification period; or
 - (iii) If your AU has a twenty-four-month certification period, you can choose to use the expense as a one-time deduction, average the expense for the first twelve months of your certification period, or average it for the remainder of our certification period.
 - (b) Recurring expenses are expenses that happen on a regular basis. We estimate your monthly expenses for the certification period.
 - (4) We do not allow a medical expense as an income deduction if:
 - (a) The expense was paid before you applied for benefits or in a previous certification period;
 - (b) The expense was paid or will be paid by someone else;
 - (c) The expense was paid or will be paid by the department or another agency;

- (d) The expense is covered by ~~((medical))~~ health care insurance;
- (e) We previously allowed the expense, and you did not pay it. We do not allow the expense again even if it is part of a repayment agreement;
- (f) You included the expense in a repayment agreement after failing to meet a previous agreement for the same expense; or
- (g) You claim the expense after you have been denied for presumptive SSI; and you are not considered disabled by any other criteria.

AMENDATORY SECTION (Amending WSR 11-11-089, filed 5/18/11, effective 6/18/11)

WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits? (1) We decide if your assistance unit (AU) is eligible for benefits and calculate your monthly benefits based on an estimate of your AU's gross monthly income and expenses. This is known as prospective budgeting.

(2) We use your current, past, and future circumstances for a representative estimate of your monthly income.

(3) We may need proof of your circumstances to ensure our estimate is reasonable. This may include documents, statements from other people, or other proof as explained in WAC 388-490-0005.

(4) We use one of two methods to estimate income:

(a) **Anticipating monthly income (AM):** With this method, we base the estimate on the actual income we expect your AU to receive in the month (see subsection (6)); and

(b) **Averaging income (CA):** With this method, we add the total income we expect your AU to receive for a period of time and divide by the number of months in the period (see subsection ~~((7))~~ (6)).

(5) ~~((When determining eligibility for apple health for kids programs as listed in WAC 388-505-0210 or pregnancy medical as listed in WAC 388-462-0015, we can use the method most beneficial to your AU.~~

~~((6))~~ Anticipating monthly income: We must use the anticipating monthly method:

(a) When we estimate income for anyone in your AU, if you or anyone in your AU receive SSI-related medical benefits under chapter ~~((388-475))~~ 182-512 WAC.

(b) When we must allocate income to someone who is receiving SSI-related medical benefits under chapter ~~((388-475))~~ 182-512 WAC.

(c) In the month of application, when you are a destitute migrant or destitute seasonal farmworker under WAC 388-406-0021. In this situation, we must use anticipating monthly (AM) for all your AU's income.

(d) To budget SSI or Social Security benefits even if we average other sources of income your AU receives.

~~((7))~~ (6) Averaging income: When we average your income, we consider changes we expect for your AU's income. We determine a monthly amount of your income based on how often you are paid:

(a) If you are paid weekly, we multiply your expected income by 4.3;

(b) If you are paid every other week, we multiply your expected income by 2.15;

(c) In most cases if you receive your income other than weekly or every other week, we estimate your income over your certification period by:

(i) Adding the total income for representative period of time;

(ii) Dividing by the number of months in the time frame; and

(iii) Using the result as a monthly average.

(d) If you receive your yearly income over less than a year because you are self employed or work under a contract, we average this income over the year unless you are:

(i) Paid on an hourly or piecework basis; or

(ii) A migrant or seasonal farmworker under WAC 388-406-0021.

~~((8))~~ (7) We use the same method for each month in your certification period, including the month of application, unless:

(a) A full month's income is not anticipated in the month of application. In this situation, we budget your income in the month of application using the anticipated monthly (AM) method and average your income (CA) for the rest of the months in your certification.

(b) You are a destitute migrant or destitute seasonal farmworker. We must budget your income in the month of application using the anticipated monthly method, as required by subsection (6). We may average your income for the rest of the months in your certification period.

~~((9))~~ (8) If you report a change in your AU's income, and we expect the change to last through the end of the next month after you reported it, we update the estimate of your AU's income based on this change.

~~((10))~~ (9) If your actual income is different than the income we estimated, we don't make you repay an overpayment under chapter 388-410 WAC or increase your benefits unless you meet one of the following conditions:

(a) You provided incomplete or false information; or

(b) We made an error in calculating your benefits.

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

WAC 388-455-0005 How do lump sum payments affect benefits? (1) A lump sum payment is money that someone receives but does not expect to receive on a continuing basis.

(2) For cash assistance (~~(and family medical programs)~~), we count a lump sum payment:

(a) As a resource, under WAC 388-455-0010, if it was awarded for wrongful death, personal injury, damage, or loss of property.

(b) As income, under WAC 388-455-0015, if it was received for any other reason, with the exception of subsection (3) and (4) of this section.

(3) ~~(For medical programs, receipt of a lump sum by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt resource in the month of receipt. Any amounts remaining on the first of the next month will be~~

~~counted if they remain in the form of a countable resource. Any amounts remaining the first of the month after conversion will remain exempt if they are in the form of an exempt resource.~~

~~(4))~~ For cash (~~(and family medical)~~) assistance programs, tax refunds and earned income tax lump sums are excluded as income and excluded as a resource for twelve months from the date of receipt.

~~((5))~~ (4) For Basic Food, we count lump sum payments for a previous period as a resource under WAC 388-470-0055. We count any amount for current or future months as income to your assistance unit.

AMENDATORY SECTION (Amending WSR 08-11-105, filed 5/20/08, effective 7/1/08)

WAC 388-455-0010 When and how does the department treat lump sum payments as a resource for cash assistance (~~(and family medical)~~) programs? (1) If you receive a lump sum payment, we count it as a resource if it was awarded for:

(a) Wrongful death;

(b) Personal injury;

(c) Damage; or

(d) Loss of property.

(2) If some of your lump sum payment is designated for medical bills or to repair or replace damaged property, we do not count the designated amount as a resource for sixty days starting the month after you received the payment. After the sixty day period, we count all of the lump sum payment that remains as a resource.

~~((3) For family medical programs, we do not count an increase in your resources if you are continuously eligible as described under WAC 388-470-0026 (1) and (2).)~~

AMENDATORY SECTION (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

WAC 388-455-0015 When and how does the department treat lump sum payments as income for cash assistance (~~(and family medical)~~) programs? This section applies to cash (~~(and family medical)~~) assistance programs.

(1) If you receive a lump sum payment that is not awarded for wrongful death, personal injury, damage, or loss of property, we count this payment as income to your assistance unit. We budget this income according to effective date rules under WAC 388-418-0020.

(2) For cash assistance, if you cannot access some or all of your lump sum payment for reasons beyond your control, we will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.

(3) To decide the amount of your lump sum we count as income, we take the following steps:

(a) First, we subtract the value of your current resources from the resource limit under WAC 388-470-0005;

(b) Then, we subtract the difference in (3)(a) from the total amount of the lump sum; and

(c) The amount left over is what we count as income, as specified in WAC 388-450-0025 and 388-450-0030.

(4) When the countable amount of the lump sum payment is:

(a) Less than your payment standard plus additional requirements, we count it as income in the month it is received.

(b) More than one month's payment standard plus additional requirements but less than two months:

(i) We count the portion equal to one month's payment standard plus additional requirements as income in the month it is received; and

(ii) We count the remainder as income the following month.

(c) Equal to or greater than the total of the payment standard plus additional requirements for the month of receipt and the following month, we count the payment as income for those months.

(5) If you receive a one-time lump sum payment, and you are ineligible or disqualified from receiving cash benefits:

(a) We allocate the payment to meet your needs as described under WAC 388-450-0105; and

(b) Count the remainder as a lump sum payment available to eligible members of your assistance unit according to the rules of this section.

~~((6) For family medical programs:~~

~~(a) We count lump sum payments as income in the month you receive the payment.~~

~~(b) We count lump sums received by a member of a federally recognized tribe for exercising federally protected rights or extraction of exempt resources as an exempt resource in the month of receipt. Any amount remaining the first of the next month in the form of an exempt resource will remain exempt. Any amount remaining the first of the month will be countable if in the form of a countable resource.~~

~~(c) If you cannot access some or all of your lump sum payment for reasons beyond your control, will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.~~

~~(d) We count any money that remains on the first of the next month as a resource except for recipients as described in WAC 388-470-0026 (1) and (2).)~~

WSR 13-13-006
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 6, 2013, 11:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-18-080.

Title of Rule and Other Identifying Information: WAC 392-101-010 Conduct of administrative hearings, giving the office of superintendent of public instruction (OSPI) the authority to send appeals through the office of administrative hearing[s] (OAH). Updating the types of appeal hearings that can be heard by OAH as well as updating WACs associated with the various types of appeals.

Hearing Location(s): OSPI Wanamaker Conference Room, 600 Washington Street S.E., Olympia, WA 98504, on August 13, 2013, at 11:30 a.m.

Date of Intended Adoption: August 14, 2013.

Submit Written Comments to: Catherine Slagle, 600 Washington Street, Olympia, WA 98504-7200, e-mail Catherine.slagle@k12.wa.us, fax (360) 753-4201, by August 13, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin by August 5, 2013, TTY (360) 664-3631 or (360) 725-6133.

Statutory Authority for Adoption: RCW 28A.150.100.

Name of Agency Personnel Responsible for Drafting and Implementation: Catherine Slagle, Olympia, Washington, (360) 725-6136; and Enforcement: Alan Burke, Olympia, Washington, (360) 725-6343.

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

June 6, 2013

Randy Dorn

State Superintendent

AMENDATORY SECTION (Amending WSR 08-22-035, filed 10/30/08, effective 11/30/08)

WAC 392-101-010 Conduct of administrative hearings. The superintendent of public instruction hereby assigns the following administrative hearings to the office of administrative hearings and hereby delegates to the administrative law judge conducting any such hearing the authority to render the final decision by the superintendent of public instruction:

(1) Nonresident transfer appeals ((pursuant to)) under chapter 392-137 WAC ((392-137-055(2))).

(2) ((Special education)) Due process hearings ((pursuant to WAC 392-171-531)) under chapter 392-172A WAC or as amended.

(3) Equal educational opportunity complaints ((pursuant to)) under WAC 392-190-075.

(4) Professional certification appeals ((pursuant to)) under WAC ((180-75-030)) 181-86-150.

(5) National school lunch program, special milk program for children, school breakfast program, summer food service program, and child and adult care food program ((and summer food service program)) appeals ((pursuant to)) under 7 C.F.R. Parts 210, 215, 220, 225 and 226.

(6) Traffic safety education appeals ((pursuant to)) under chapter 392-153 WAC ((392-153-005 through 392-153-040)).

(7) Bus driver authorization appeals ((pursuant to)) under chapter 392-144 WAC.

(8) Audit resolution appeals of agency management decisions regarding resolution of state and federal audit findings under chapter 392-115 WAC.

WSR 13-13-008
PROPOSED RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed June 6, 2013, 3:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-14-017.

Title of Rule and Other Identifying Information: SWCAA 802 SEPA procedures.

Hearing Location(s): Office of Southwest Clean Air Agency (SWCAA), 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, on October 3, 2013, at 3:00 p.m.

Date of Intended Adoption: October 3, 2013.

Submit Written Comments to: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, e-mail wess@swcleanair.org, fax (360) 574-0925, by September 20, 2013.

Assistance for Persons with Disabilities: Contact Tina Hallock by September 20, 2013, TTY (360) 574-3058.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule changes is to replace an existing local rule with a new local rule more consistent with currently applicable state regulations.

Reasons Supporting Proposal: The existing local regulation governing the use of SEPA for agency actions is outdated and does not cite state regulations that are appropriate for implementation of SEPA policy and procedure at the current time. The proposed rule change will replace the agency's existing SEPA policy resolution with a formal regulation consistent with the newest version of applicable state regulations.

Statutory Authority for Adoption: RCW 43.21C.120.

Statute Being Implemented: RCW 43.21C.120.

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 986682 [98682], (360) 574-3058; Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 986682 [98682], (360) 574-3058; and Enforcement: Robert Elliott, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 986682 [98682], (360) 574-3058.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes proposed by SWCAA are consistent with federal or state rules already in effect. This agency is not subject to the small business economic impact provisions of chapter 19.85 RCW. A fiscal analysis has been performed to establish the basis for any proposed fee increases. Copies of this analysis are available from SWCAA.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(b), this requirement does not apply to this rule adoption.

June 6, 2013
 Robert D. Elliott
 Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-14 issue of the Register.

WSR 13-13-009
PROPOSED RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed June 7, 2013, 4:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-12-048.

Title of Rule and Other Identifying Information: SWCAA 493-100 Consumer Products, SWCAA 493-200 Spray Paints, SWCAA 493-300 Architectural Coatings, SWCAA 493-400 Motor Vehicle Refinishing, and SWCAA 493-500 Area Source Common Provisions.

Hearing Location(s): Office of Southwest Clean Air Agency (SWCAA), 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, on October 3, 2013, at 3:00 p.m.

Date of Intended Adoption: October 3, 2013.

Submit Written Comments to: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, e-mail wess@swcleanair.org, fax (360) 574-0925, by September 20, 2013.

Assistance for Persons with Disabilities: Contact Tina Hallock by September 20, 2013, TTY (360) 574-3058.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule changes is to replace existing local rules with similar federal regulations for selected consumer products and spray coatings. The federal regulations will be adopted by reference with provisions to allow for local implementation of the adopted regulations.

Reasons Supporting Proposal: The existing local regulations are outdated. The rule changes will make SWCAA's program consistent with currently applicable federal requirements.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 986682 [98682], (360) 574-3058; Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 986682 [98682], (360) 574-3058; and Enforcement: Robert Elliott, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 986682 [98682], (360) 574-3058.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes proposed by SWCAA are consistent with federal or state rules already in effect. This agency is not subject to the small business economic impact provisions of chapter 19.85 RCW. A fiscal analysis has been performed to establish the basis for any proposed fee increases. Copies of this analysis are available from SWCAA.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70.94.141(1), section 201, chapter 403, Laws of 1995, this requirement does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995 for this action.

June 6, 2013
Robert D. Elliott
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-15 issue of the Register.

WSR 13-13-017
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed June 12, 2013, 7:05 a.m.]

The department is formally withdrawing its proposed amendment to WAC 16-532-040 that would have increased the hop assessment rate per "affected unit" from \$2.00 to \$2.75. This amendment was proposed in WSR 13-05-053 (filed February 13, 2013). A referendum of affected producers was conducted pursuant to RCW 15.65.160 and the proposal was defeated.

Don R. Hover
Director

WSR 13-13-031
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 13, 2013, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-12-130.

Title of Rule and Other Identifying Information: Chapter 392-141 WAC, Transportation—State allocation for operations.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 4th Floor, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on August 14, 2013, at 11:00 a.m.

Date of Intended Adoption: August 15, 2013.

Submit Written Comments to: Allan Jones, OSPI, Student Transportation, P.O. Box 47200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us.

Assistance for Persons with Disabilities: Contact Wanda Griffin by August 9, 2013, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To define the alternative funding systems as required in RCW 28A.160-.191, and provided:

The superintendent of public instruction shall ensure that the allocation formula results in adequate appropriation for

low enrollment districts, nonhigh districts, districts involved in cooperative transportation agreements, and cooperative special transportation services operated by educational service districts. If necessary, the superintendent shall develop a separate process to adjust the allocation of the districts.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting: Catherine Slagle, OSPI, (360) 725-6136; Implementation: JoLynn Berge, OSPI, (360) 725-6292; and Enforcement: Allan J. Jones, OSPI, (360) 725-6120.

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

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

June 13, 2013
Randy Dorn
State Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

WAC 392-141-310 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Superintendent" means the superintendent of public instruction.

(2) "District" means either a school district or an educational service district.

(3) The definition of "school" includes learning centers or other agencies where educational services are provided.

(4) "Eligible student" means any student served by a district transportation program either by bus, district car, or individual arrangements meeting one or more of the following criteria:

(a) A student whose route stop is outside the walk area of the student's enrollment school site; or

(b) A student whose disability is defined by RCW 28A.155.020 and who is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from school.

Districts determine which students are provided with transportation services; however, only eligible students qualify for funding under the operations allocation.

(5) "To and from transportation" means all transportation between route stops and schools both before and after the school day. To and from transportation includes transportation between home and school and transportation between schools, commonly referred to as shuttles. Transportation not authorized for state allocations under this definition includes, but is not limited to, transportation for students participating in nonacademic extended day programs, field trips, and extracurricular activities.

(6) "Home to school transportation" means all student transportation between route stops and schools both before and after the school day. Home to school transportation does not include transportation between schools.

(7) "Basic program transportation" means students transported between home and school for their basic education. Basic program transportation includes those students who qualify under RCW 28A.155.020 for special services and are capable of protecting his or her own welfare while traveling to or from school and those students who are enrolled in gifted or bilingual programs or homeless students that do not require specialized transportation. Also included in basic program transportation is transportation required to comply with the school choice provisions of the Elementary Secondary Education Act.

(8) "Special program transportation" means home to school transportation for one of the following specialized programs:

(a) Special education programs provided for by chapter 28A.155 RCW and where transportation as a related service is included on the student's individual education plan or where transportation is required under the provisions of Section 504 of the Rehabilitation Act of 1973; or

(b) Students who require special transportation to a bilingual program in a centralized location; or

(c) Students who require special transportation to a gifted program in a centralized location; or

(d) Students who require special transportation to their school of origin as required by the provisions of the McKinney-Vento Homeless Assistance Act; or

(e) Students who require special transportation to a district operated head start, district operated early childhood education assistance program, or other district operated early education program.

(9) "Kindergarten route" means a school bus providing home to school transportation for basic education kindergarten students operated between the beginning and end of the school day.

(10) "Private party contract" means the provision of home to school transportation service using a private provider (not in a school bus). Private party contracts shall require criminal background checks of drivers and other adults with unsupervised access to students and assurances that any students transported be provided with child safety restraint systems that are age and weight appropriate. Vehicles used must meet school bus specifications established in chapter 392-143 WAC if they have a manufacturer's design capacity of greater than ten passengers, including the driver. However, a vehicle manufactured to meet the federal specifications of a multifunction school activity bus may be used.

(11) "In lieu transportation" means a contract to provide home to school transportation with a parent, guardian or adult student, including transportation on rural roads to access a school bus stop.

(12) "Count period" is the three consecutive school day window used for establishing the reported student count on home to school routes.

(13) The school year is divided into three "report periods," as follows: September - October, November - January, and February - April. These report periods are also referred to respectively as the fall, winter and spring reports. The count period must not fall within five school days of the end of the report period.

(14) "Combined student count" is the total number of basic program or special program eligible student riders reported during each report period. The combined student counts for the determination of funding consist(~~s~~) of the prorated basic program and special program student counts from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring student counts are used for the determination of the efficiency rating. The combined student counts (~~(s)~~) are prorated based on the number of months in the respective report period. ~~((For the 2011-12 school year, the fall 2011 report values will be used to provide values for the spring 2011 report.))~~

(15) "Average distance to school" means the average of the distances from each school bus stop measured by the shortest road path to the assigned student's school of enrollment.

(16) "Prorated average distance" is calculated by taking the average distance to school weighted by the number of months in the corresponding report period. The prorated average distance used in calculating district allocation consists of the prorated average distance from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring average distances are used for the determination of the efficiency rating. ~~((The average distance is prorated based on the number of months in the respective report period.))~~

(17) "Prorated number of destinations" is calculated by taking the number of learning centers a school district provides with home-to-school transportation service weighted by the number of months in the corresponding report period. The prorated number of destinations used in calculating district allocation consists of the prorated number of destinations from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter, and spring number of destinations are used for the determination of the efficiency rating.

(18) "Land area" is the area of the school district in square miles, excluding water and public lands, as determined by the superintendent. For educational service districts, the land area value will be determined by the superintendent from the contiguous area provided with transportation service.

~~((18))~~ (19) "Roadway miles" refers to the number of public roadway miles within the land area of the school district, as determined by the superintendent. For educational service districts, the roadway mile value will be determined by the superintendent from the roadway miles within the contiguous area provided with transportation service.

~~((19))~~ (20) "Walk area" is defined as the area around a school where the shortest safe walking route to school is less than one mile.

~~((20))~~ (21) "District car route" means home to school transportation where a district motor pool vehicle (not a school bus) is used to transport an eligible student or students. Any regularly scheduled home to school transportation in a district car is required to be driven by an authorized school bus driver.

~~((21))~~ (22) "District car allocation" is calculated by multiplying the total annual district car route mileage by the

rate of reimbursement per mile that is authorized for state employees for the use of private motor vehicles in connection with state business in effect on September 1st of each year.

~~((22))~~ (23) A "low ridership district" is defined as a district with an annual student count less than two hundred eighteen students.

(24) A "nonhigh" district is defined as a district meeting the eligibility requirements for a nonhigh district as established by the superintendent of public instruction's school apportionment and financial services section.

(25) A "transportation cooperative" is defined as two or more districts sharing transportation operations administrative functions. An interdistrict agreement for the provision of maintenance services on school buses does not constitute a transportation cooperative for the purposes of this chapter, regardless if the agreement qualifies as a transportation cooperative under the provisions of chapter 392-346 WAC, unless shared operations administrative functions are also included in the interdistrict agreement. A transportation cooperative has the option of reporting as a single entity.

(26) "Alternate funding system" means an additional funding system as provided in RCW 28A.160.191, defined by OSPI to adjust the allocation for low enrollment school districts, nonhigh school districts, school districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services.

~~((23))~~ (27) "Expected allocation" means the initial amount of funding resulting from the regression analysis calculation.

~~((24))~~ (28) "Adjusted allocation" means the expected allocation plus any alternate funding system, calendar, or legislative adjustments.

~~((25))~~ (29) "Actual allocation" means the lesser of the previous year's actual reported transportation expenditures including adjustments by the legislature or the adjusted allocation.

~~((26))~~ (30) "Efficiency evaluation" refers to the statistical evaluation of efficiency of a district's transportation operation using linear programming of the data required by the funding formula and the number of buses used on home-to-school routes. Each district is separately compared to an individualized statistical model of a district having similar site characteristics. The efficiency evaluation is expressed as a percentage efficiency rating.

(31) A school district's "transportation funding percentage" is calculated by dividing the district's actual allocation by the district's approved to-and-from transportation expenditures.

(32) The "state median percent funded" is determined by calculating each school district's transportation funding percentage and taking the median value by sorting the total number of reporting districts in descending order and selecting the middle value. If there is an even number of districts, the bottom value in the top half shall be used.

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

WAC 392-141-320 District reporting requirements.

(1) Reports shall be submitted by each district to the superintendent ~~((prior to))~~ no later than the last business day in October, the first business day in February, and the first business day in May. These reports shall reflect to the extent practical the planned student transportation program for the entire report period and which is in operation during the ridership count period. The superintendent shall have the authority to make modifications or adjustments in accordance with the intent of RCW 28A.160.150. Each district shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations.

(2) In each report period, districts shall report such operational data and descriptions, as required by the superintendent to determine the operations allocation for each district, including:

- (a) School bus route information;
- (b) Student count information; and
- (c) An update to the estimated total car mileage for the current school year.

(3) For the fall report, districts shall report to the superintendent as required:

(a) An annual school bus mileage report including the total to and from school bus miles for the previous school year, and other categories as requested;

(b) An annual report of each type of fuel purchased for student transportation service for the previous school year, including quantity and cost; and

(c) An annual report as required by RCW 28A.300.540 of the number of students transported to their school of origin as required by the McKinney-Vento Homeless Assistance Act for the previous school year, and the total mileage and additional cost of such transportation. These costs may include, but are not limited to:

(i) Transportation service that serves only student(s) under McKinney-Vento. Districts ~~((shall))~~ may determine costs based upon route mileage and an average per mile cost for operation of the bus or vehicle. Driver time may be taken from actual driver costs records if such records are maintained, or may be determined using an average driver costs factor.

(ii) Incremental revisions in route at the start or end of a route to accommodate McKinney-Vento transportation, if separately identified, may be included based upon route mileage and an average per mile cost for operation of the bus or vehicle.

(iii) Costs for public transportation or other contracted services for transporting McKinney-Vento student(s).

(iv) Nondriver transportation staff positions whose job duties are predominately overseeing or routing services to McKinney-Vento students. If the position duties encompass other non-McKinney-Vento areas, then only the costs directly related to McKinney-Vento transportation shall be included and such costs shall be determined using federal time and effort reporting procedures.

No indirect or allocated costs may be included in this reporting.

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

WAC 392-141-350 Authorization and limitation on district payments for individual and in lieu transportation arrangements. Districts may commit to individual transportation or in lieu arrangements subject to approval by the educational service district superintendent or his or her designee. The following arrangements and limitations apply:

(1) A district shall contract with the custodial parent, parents, guardian(s), person(s) in loco parentis, or adult student(s) to pay the lesser of the following in lieu of transportation by the district:

(a) Mileage and tolls for home to school transportation (in whole or part) for not more than two necessary round trips per school day, unless additional trips are required due to the provisions of the student's individualized education program; or

(b) Mileage and tolls for home to school transportation for not more than five round trips per school year, plus room and board.

(2) The in lieu of transportation mileage, tolls and board and room rates of reimbursement which a district is hereby authorized to pay shall be computed as follows:

(a) Mileage reimbursement shall be computed by multiplying the actual road distance from home to school (or other location specified in the contract) with any type of transportation vehicle that is operated for the purpose of carrying one or more students by the maximum rate of reimbursement per mile that is authorized by law for state employees for the use of private motor vehicles in connection with state business;

(b) Toll reimbursement shall be computed by adding the actual fees paid as a condition to the passage of a transportation vehicle and its student passengers or its operator, or both, across a bridge or upon a ferry, and similar fees imposed as a condition to the passage, ingress, or egress of such vehicle and its student passengers or its operator, or both, while traveling to and from school; and

(c) Board and room reimbursement shall be computed at the rates established by the department of social and health services (inclusive of the basic rates and, in the case of disabled students, the additional amounts for students with special needs, but exclusive of any rates or amounts for clothing and supplies).

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

WAC 392-141-360 Operation allocation computation. (1) The operation allocation shall be calculated using the following factors:

(a) The combined student count of basic program students;

(b) The combined student count of special program students;

(c) The district's prorated average distance;

(d) The district's total land area;

(e) ~~((The district's total number of roadway miles;~~

~~(f))~~ The district's prorated number of destinations ~~((served by home to school routes;~~

~~(g) The district's number of kindergarten routes operated during ten consecutive school days that include the count period and are all within the report period; and~~

~~(h))~~;

~~(f)~~ If the school district is a nonhigh district, the answer to the following question: Does the district provide transportation service for the high school students residing in the district?

(g) Any other district data element as described by the superintendent in the annual operations bulletin. In order for a data element to be included, it must be found to be statistically significant for two consecutive school years.

For each district, an expected allocation is determined using the coefficients resulting from a regression analysis of (a) through ~~((h))~~ (g) of this subsection, evaluated statewide against the prior school year's total to and from transportation expenditures. If a data element is determined not to be statistically significant, it shall not be included in the calculation of the allocation. ~~((For the 2011-12 school year, the coefficients will be calculated based on the fall 2011 report and the 2010-11 school year transportation expenditures. In the 2012-13 school year and thereafter,))~~ The coefficients will be determined using the prior school year fall, winter, and spring reports and prior school year expenditures.

(2) For the calculation of the regression analysis coefficients, the allowable transportation expenditures for each district shall be ~~((reduced by the total amount of transportation employee compensation costs in excess of the rate provided in the Omnibus Appropriations Act, including base salary or hourly wage rate, fringe benefit rates, and applicable health care rates))~~ adjusted as required by the legislature.

(3) The adjusted allocation is the result of modifying the expected allocation by:

(a) Adding any district car mileage reimbursement; and

(b) Adding any adjustment resulting from the alternate funding systems identified in WAC 392-141-380; and

(c) Making any deduction resulting from an alternate school year calendar approved by the state board of education under the provisions of RCW 28A.305.141(-); and

(d) Making any adjustment as required by the legislature.

(4) Each district's actual allocation for student transportation operations is the lesser of the prior school year's total allowable student transportation expenditures adjusted as required by the legislature or the adjusted allocation. School districts contracting for student transportation operations shall have any payments in lieu of depreciation under the provisions of WAC 392-142-245 deducted from the district's allowable transportation expenditures.

(5) The funding assumption for the transportation operation allocation is that kindergarten through twelfth grade (K-12, or whatever grades are enrolled in district schools) school transportation services are provided by the district five days per week, to and from school, before and after the regular school day and operating one hundred eighty days per school year. K-12 service being provided on any other basis is subject to corresponding proration of the operation allocation.

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

WAC 392-141-370 Transition and hold harmless provisions. (1) ~~((For the 2011-12 through the 2013-14 school years;))~~ Until the allocation process described in WAC 392-141-360 is fully funded by the legislature, the transition process will prorate each district's transportation allocation to the extent funds are available based on the difference between the district's prior year's allocation and the district's allocation determined through the process described in WAC 392-141-360.

(2) ~~((For the 2011-12 through the 2013-14 school years))~~ During the transition, each school district shall receive the lesser of the previous school year's student transportation operations allocation as adjusted by the legislature or the total of allowable transportation expenditures identified on the previous school year's final expenditure report plus district indirect expenses calculated using the federal restricted indirect rate calculated in the district annual financial report and any legislative adjustments.

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

WAC 392-141-380 Alternate funding systems for low enrollment districts, nonhigh districts, districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services. After the transition period described in WAC 392-141-370, the superintendent shall adjust the amount of the transportation operation allocation for low ~~((enrollment))~~ ridership, nonhigh, districts in interdistrict transportation cooperatives, and educational service districts operating special transportation services in the following manner:

(1) ~~The ((allocation calculated under WAC 392-141-360 is compared with the prior year's total approved transportation expenditures for each))~~ school ((district)) district's prior school year's transportation funding percentage is compared to the state median percent funded;

(2) ~~((The average percentage increase for all districts above the previous year's allocation is calculated))~~ If the district's prior year transportation funding percentage is greater than the state median percent funded no adjustment is made; and

(3) ~~((The district's allocation shall be either the calculated allocation or the previous year's allocation increased by the average determined in subsection (2) of this section, whichever is greater, but not more than the prior year's transportation expenditures.~~

~~No later than the first business day of July of each year, the superintendent will notify school districts of the adjustment process to be used in the coming school year.)~~ If the district's prior year transportation funding percentage is less than the state median percent funded, the allocation shall be adjusted by the difference between the state median percent funded and the district's prior year transportation funding percentage.

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

WAC 392-141-410 Recovery of transportation funds. The superintendent of public instruction shall recover (take back) state pupil transportation allocations that are not expended for the allowable student transportation program costs under the accounting guidance provided by the superintendent. The amount of the recovery shall be calculated as follows:

(1) Determine the district's state allocation for student transportation operations for the school year.

(2) Determine the district's allowable student transportation costs as follows:

(a) Sum the following amounts:

(i) The district's direct expenditures for general fund program 99 pupil transportation, and for educational service district student transportation operations expenditures in program 70 transportation excluding expenditures associated with the regional coordinator and bus driver training grants;

(ii) Allowable indirect charges equal to the expenditures as calculated pursuant to (a)(i) of this subsection times the ~~((federal restricted indirect))~~ state recovery rate as calculated in the district annual financial report;

(b) Subtract the district's revenues for the school year for revenue account 7199 (transportation revenues from other districts).

(3) If the allowable program costs are less than the state allocation, OSPI shall recover the difference.

Funds transferred into the transportation vehicle fund shall not be included as allowable transportation program costs for recovery calculations.

WSR 13-13-035

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed June 13, 2013, 3:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-07-077.

Title of Rule and Other Identifying Information: Amends WAC 181-85-075 in response to the teacher/principal evaluation system enacted by the 2012 legislature.

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: In 2012, the legislature passed requirements for a new teacher evaluation system. Requirements for licensure related to the evaluations system go into effect in September 2013.

Reasons Supporting Proposal: Strengthens requirements; stakeholder.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], 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.

June 12, 2013
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-17-012, filed 8/2/12, effective 9/2/12)

WAC 181-85-075 Continuing education requirement. Continuing education requirements are as follows:

(1) Each holder of a continuing certificate affected by this chapter shall be required to complete during a five-year period one hundred fifty continuing education credit hours, as defined in WAC 181-85-025 and 181-85-030, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates as calculated in WAC 181-85-100.

(2) Individuals holding a valid continuing certificate in subsection (1) of this section may choose to renew the certificate via annual professional growth plans developed since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207 for teachers, WAC 181-78A-540(1) for administrators, or WAC 181-78A-540(2) for educational staff associates. For educators holding multiple certificates in chapter 181-85 WAC or WAC 181-79A-251, a professional growth plan for teacher, administrator, or educational staff associate shall meet the requirement for all certificates held by an individual which is affected by this section. Each completed annual professional growth plan shall receive the equivalent of thirty continuing education credit hours.

Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(3) Provided, That each holder of a continuing or a standard certificate affected by this chapter may present a copy of a valid certificate issued by the National Board for Professional Teaching Standards in lieu of the completion of the continuing education credit hours required by this chapter.

(4) Each holder of a continuing school psychologist certificate affected by this chapter may present a copy of a valid National Certified School Psychologist certificate issued by

the National Association of School Psychologists in lieu of the completion of the continuing education credit hours required by this chapter.

WSR 13-13-036
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed June 13, 2013, 4:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-24-061.

Title of Rule and Other Identifying Information: Amends WAC 181-78A-270 in response to the teacher/principal evaluation system enacted by the 2012 legislature.

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: In 2012, the legislature passed requirements for a new teacher evaluation system. Requirements for licensure related to the evaluations system go into effect in September 2013.

Reasons Supporting Proposal: Strengthens requirements; stakeholder.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], 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.

June 12, 2013
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-18-004, filed 8/23/12, effective 9/23/12)

WAC 181-78A-270 Approval standard—Knowledge and skills. Each preparation program must be in compliance with the program approval standards of WAC 181-78A-220(5):

(1) **TEACHER RESIDENCY CERTIFICATION.**

(a) **EFFECTIVE TEACHING.**

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

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

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

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

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

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

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

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

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

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

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

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

Teacher evaluation. After August 31, 2013, an approved preparation program for teachers shall require candidates for a residency certificate to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements. At a minimum, teacher preparation programs must address the following knowledge and skills related to evaluations:

(i) Examination of Washington's evaluation requirements, criteria, four-tiered performance rating system, and the preferred instructional frameworks used to describe the evaluation criteria;

(ii) Self-assessment, goal setting, and reflective practices;

(iii) Evidence gathering over time;

(iv) Use of student growth data and multiple measures of performance;

(v) Evaluation conferencing; and

(vi) Use of an online tool to review observation notes and submit materials to be included in evaluation.

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

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

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

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

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

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

Successful demonstration of standards.

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

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

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

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

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

(vi) A school or program administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by understanding, responding to, and

influencing the larger political, social, economic, legal and cultural context.

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

(c) Teacher and principal evaluation. After August 31, 2013, an approved preparation program for principals shall require candidates for a residency principal certificate to demonstrate knowledge of teacher evaluation research, Washington's evaluation requirements, and successfully complete opportunities to practice teacher evaluation skills. At a minimum, principal preparation programs must address the following knowledge and skills related to evaluations:

(i) Examination of Washington teacher and principal evaluation criteria, four-tiered performance rating system, and the preferred instructional and leadership frameworks used to describe the evaluation criteria;

(ii) Self-assessment, goal setting, and reflective practices;

(iii) Evidence gathering over time;

(iv) Classroom observation skills;

(v) Bias training;

(vi) Rater agreement on the four-tiered system;

(vii) Use of student growth data and multiple measures of performance;

(viii) Evaluation conferencing;

(ix) Development of classroom teacher and principal support plans resulting from an evaluation; and

(x) Use of an online tool to manage the collection of observation notes, teacher- and principal-submitted materials, and other information related to the conduct of the evaluation.

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

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

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

(c) A ~~((school administrator))~~ superintendent is ~~((an))~~ the community's educational leader who has the knowledge,

skills, and cultural competence to improve learning and achievement to ensure the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

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

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

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

(g) Principal evaluation. After August 31, 2013, an approved preparation program for superintendents shall require candidates for an initial superintendent certificate to demonstrate knowledge of principal evaluation research, Washington's evaluation requirements, and successfully complete opportunities to practice principal evaluation skills. At a minimum, superintendent preparation programs must address the following knowledge and skills related to evaluations:

(i) Examination of Washington principal evaluation criteria, four-tiered performance rating system, and the preferred leadership frameworks used to describe the evaluation criteria;

(ii) Self-assessment, goal setting, and reflective practices;

(iii) Evidence gathering over time;

(iv) Observation skills;

(v) Bias training;

(vi) Rater agreement on the four-tiered system;

(vii) Use of student growth data and multiple measures of performance;

(viii) Evaluation conferencing;

(ix) Development of principal support plans resulting from an evaluation; and

(x) Use of an online tool to manage the collection of observation notes, superintendent- and principal-submitted materials, and other information related to the conduct of the evaluation.

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

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

(i) **School counseling program:** Certified school counselors develop, lead, and evaluate a data-driven school coun-

seling program that is comprehensive, utilizes best practices, and advances the mission of the school.

(ii) **Student learning and assessments:** Certified school counselors use their knowledge of pedagogy, child development, individual differences, learning barriers, and Washington state learning requirements to support student learning. They work effectively with other educators to monitor and improve student success.

(iii) **Counseling theories and technique:** Certified school counselors use a variety of research-based counseling approaches to provide prevention, intervention, and responsive services to meet the academic, personal/social and career needs of all students.

(iv) **Equity, fairness, and diversity:** Certified school counselors understand cultural contexts in a multicultural society, demonstrate fairness, equity, and sensitivity to every student, and advocate for equitable access to instructional programs and activities.

(v) **School climate and collaboration:** Certified school counselors collaborate with colleagues, families, and community members to establish and foster a safe, inclusive, and nurturing learning environment for students, staff, and families.

(vi) **Professional identity and ethical practice:** Certified school counselors engage in continuous professional growth and development and advocate for appropriate school counselor identity and roles. They adhere to ethical practices and to the Washington state and federal policies, laws, and legislation relevant to school counseling.

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

(5) **SCHOOL PSYCHOLOGIST.** School psychologist candidates will complete formalized learning opportunities, including an internship, in an approved program that includes:

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

(i) **Data-based decision making and accountability:** Certified school psychologists have knowledge of varied models and methods of assessment as part of a systematic process of data-based decision making that permeates every aspect of professional practice.

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

(iii) **Interventions and instructional support to develop academic skills:** Certified school psychologists have knowledge of the influence of biological, cultural, linguistic, and early life experiences on academic development and collaborate with others to access, implement, and evalu-

ate services at universal, targeted, and intensive levels using a variety of culturally and developmentally appropriate assessments.

(iv) **Interventions and mental health services to develop social and life skills:** Certified school psychologists have knowledge of biological, cultural, developmental, and social influences on behavior and mental health; collaborate with others, to develop, implement, and evaluate services that support socialization, cultural competence, learning, and mental health for positive impact on student learning.

(v) **Schoolwide practices to promote learning:** Certified school psychologists have knowledge of general and special education, evidence-based practices, and equity pedagogy that responds to the needs of the learners; demonstrate skills to manage time effectively, respond to the learning needs of the individual students, and plan and measure positive impact on student learning.

(vi) **Prevention and responsive services:** Certified school psychologists have knowledge of principles of resilience and risk factors and demonstrate skills in multitiered delivery of services that respond to crisis and promote learning and mental health across cultures.

(vii) **School collaboration services:** Certified school psychologists have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery; facilitate family and school partnerships and interactions with community agencies for enhancement of academic and social-behavior outcomes for children.

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

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

(x) **Legal, ethical, and professional practice:** Certified school psychologists have knowledge of the history and foundations of their profession; of multiple service models and methods; of ethical, professional, and legal standards, including the Washington Administrative Code and federal and state accountability legislation; practice in ways that are consistent with applicable standards; engage in responsive ethical and professional decision-making; and apply professional work characteristics.

(xi) **Emerging and assistive technologies:** Certified school psychologists have knowledge of and access, implement, and evaluate technology relevant to their work and to the instructional needs of individuals with disabilities.

(b) **Performance assessment.** An approved preparation program for school psychologists shall require that each candidate engage in an assessment process using the standards-

based benchmarks approved by the professional educator standards board. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan oriented to the expectations for the professional certificate.

WSR 13-13-037
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed June 14, 2013, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-084.

Title of Rule and Other Identifying Information: Chapter 308-125 WAC.

Hearing Location(s): Department of Licensing, Business and Professions Division, Real Estate Programs, 2000 4th Avenue West, Building #3, 2nd Floor Conference Room, Olympia, WA 98502, on July 23, 2013, at 10:00 a.m.

Date of Intended Adoption: July 24, 2013.

Submit Written Comments to: Dee A. Sharp, P.O. Box 9021, Olympia, WA 98507-9021, e-mail dsharp@dol.wa.gov, fax (360) 570-4981, by July 5, 2013.

Assistance for Persons with Disabilities: Contact Jennifer Fleshman by July 5, 2013, TTY (360) 664-8885 or (360) 664-6504.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 308-125-020 Application process to take examination, housekeeping change to correct subsection (2).

WAC 308-125-025 Application process to register as a real estate appraiser trainee, update role of trainee and comply with federal Dodd-Frank Act requirements.

WAC 308-125-030 Examination prerequisite general classification, update education requirements as required by the federal Appraiser Qualifications Board.

WAC 308-125-040 Examination prerequisite state-certified residential classification, update education requirements as required by the federal Appraiser Qualifications Board.

WAC 308-125-045 Examination prerequisite state-licensed classification, update education requirements as required by the federal Appraiser Qualifications Board.

WAC 308-125-050 Educational courses—Preexamination, update examination requirements as required by the federal Appraiser Qualifications Board.

WAC 308-125-070 Experience requirements, implement changes recommended by the state real estate appraiser commission.

WAC 308-125-085 Temporary practice, implement changes recommended by the state real estate appraiser commission.

WAC 308-125-090 Continuing education required, update continuing education requirements to comply with federal Dodd-Frank Act requirements, and implement changes recommended by the state real estate appraiser commission.

WAC 308-125-095 Responsibilities of the appraiser supervisor, update supervisor responsibilities to comply with federal Appraiser Qualifications Board and implement changes recommended by the state real estate appraiser commission.

WAC 308-125-140 Passing exam score, update rule to comply with the federal Appraiser Qualifications Board requirements.

All rule changes are approved and recommended to the director by the state real estate appraiser commission. These changes will update education requirements for all classification levels; update the roles of supervisory appraisers and appraiser trainees; and will implement housekeeping changes recommended by the real estate appraiser commission.

Reasons Supporting Proposal: Amendments to rules are needed to bring the agency into compliance with Title XI as amended by the federal Dodd-Frank Act, federal Appraisal Sub Committee policy, and federal Appraiser Qualifications Board 2015 qualification criteria.

Statutory Authority for Adoption: RCW 18.140.030 (1) and (15).

Rule is necessary because of federal law, Title XI as amended by Dodd-Frank Act.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dee A. Sharp, Olympia, (360) 664-6504.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rule amendments affect individual licensees and have no impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies under RCW 34.05.328 (5)(a)(i).

June 14, 2013
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

WAC 308-125-020 Application process to take examination. (1) Any person desiring to take an examination for licensure or certification as a state-licensed or state-certified residential real estate appraiser, or as a state-certified general real estate appraiser, must submit a completed examination application with supporting documents and appropriate fee to the department of licensing, business and professions division, at its official address. After the qualifications for the examination have been verified by the department, the applicant shall submit the preapproved examination application, the request for examination and the appropriate fee to the testing service approved by the director.

(2) At the time of filing with the department, an application for a state license or certification, the applicant shall possess the requisite hours of verifiable real estate appraisal experience. Experience shall be acquired within the requisite time. Qualifying experience shall consist of significant professional appraisal assistance under the supervision of a cer-

tified appraiser within the boundaries of the state of Washington except as referenced in WAC (~~308-125-095~~) 308-125-095.

(3) An application and fee shall be valid for six months from receipt by the department. An applicant may correct any discrepancies in the application other than experience during this six-month period. After six months, if the applicant has not met the prerequisites to sit for the licensure or certification examination, the applicant must submit a new application with the appropriate fee.

(4) Dishonored checks will be considered as an incomplete application.

(5) An applicant shall forfeit all examination fees for any examination or examinations for which the applicant has applied and does not take for any reason, other than through the fault or mistake of the department of licensing or the approved testing agency.

AMENDATORY SECTION (Amending WSR 08-17-016, filed 8/8/08, effective 9/8/08)

WAC 308-125-025 Application process to register as a real estate appraiser trainee. (1) Anyone who is not a licensed or certified appraiser or a registered appraiser trainee cannot provide assistance that includes analytical work and exercising discernment or discretion that leads to an appraisal conclusion.

(2) As a prerequisite to registration as a registered appraiser trainee, the applicant shall present evidence satisfactory to the director of successful completion of the appraiser qualifications board module of qualifying core curriculum of approved qualifying education modules within five years of the date of application:

- (a) Basic appraisal principles, thirty hours.
- (b) Basic appraisal procedures, thirty hours.
- (c) The National USPAP course or equivalent fifteen hours.

(d) Effective January 1, 2015, a course that, at a minimum, complies with the specifications for course content established by the Appraiser Qualifications Board that is oriented toward the expectations for the applicant.

(3) Application for registration as a trainee from persons who have had either a real estate license or real estate appraiser license suspended or revoked shall not be accepted by the department until after the time period of the suspension or revocation has expired.

(4) An applicant for registration as a trainee shall present a completed registration form together with the appropriate fee and copies of core curriculum course completion certificates to the director prior to issuance of the approved trainee registration certificate.

(5) Registration as a trainee may be denied for unprofessional conduct as provided in RCW 18.235.130.

AMENDATORY SECTION (Amending WSR 10-09-025, filed 4/13/10, effective 5/14/10)

WAC 308-125-030 Examination prerequisite general classification. The general real estate appraiser classification applies to the appraisal of all types of real property.

(1) As a prerequisite to taking the examination for certification as a state-certified general real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than ~~((one hundred eighty classroom hours of qualifying education as approved by the director. Each applicant must successfully complete a thirty classroom hour course in the basic principles of real estate appraising and a fifteen classroom hour course in the Uniform Standards of Professional Appraisal Practice as part of the one hundred eighty classroom hours of course work. Provided, That effective November 1, 2007, the required number of classroom hours is))~~ three hundred hours in the following core modules:

- (a) Basic appraisal principles, thirty hours.
- (b) Basic appraisal procedures, thirty hours.
- (c) The National USPAP course or equivalent, fifteen hours.
- (d) General appraiser market analysis and highest and best use, thirty hours.
- (e) Statistics, modeling and finance, fifteen hours.
- (f) General appraiser sales comparison approach, thirty hours.
- (g) General appraiser site valuation and cost approach, thirty hours.
- (h) General appraiser income approach, sixty hours.
- (i) General appraiser report writing and case studies, thirty hours.
- (j) Appraisal subject matter electives, thirty hours.

(2) Credit towards qualifying education requirements may be obtained via the completion of a degree program in real estate from an accredited degree-granting college or university provided the college or university has had its curriculum reviewed and approved by the Appraiser Qualifications Board.

(3) An original certification as a state-certified general real estate appraiser shall not be issued to any person who does not possess three thousand hours of appraisal experience obtained continuously over a period of not less than thirty months in Washington or in another state having comparable certification requirements.

~~((3))~~ (4) To fulfill the experience requirement, a candidate must have at least one thousand five hundred hours of nonresidential appraisal experience.

~~((4))~~ (5) Effective January 1, ~~((2008))~~ 2015, applicants for the certified general license must possess a bachelor's degree or higher in any field of study. Through December 31, 2014, applicants for the certified general license must possess a bachelor's degree or higher in any field of study or, in lieu of the required degree, thirty semester credit hours covering the following subject matter courses:

- (a) English composition;
- (b) Principles of economics (micro and macro);
- (c) Finance;
- (d) Algebra, geometry or, higher mathematics;
- (e) Statistics;
- (f) Introduction to computers: Word processing/spreadsheets;
- (g) Business or real estate law; and
- (h) Two elective courses in accounting, geography, agricultural economics, business management, or real estate;

as approved by the appraiser qualifications board and the director, in addition to the required qualifying core curriculum requirements.

AMENDATORY SECTION (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

WAC 308-125-040 Examination prerequisite state-certified residential classification. The state-certified residential real estate appraiser classification applies to appraisals of all types of residential property of one to four units without regard to transaction value or complexity and nonresidential property having a transaction value less than two hundred fifty thousand dollars.

(1) As a prerequisite to taking the examination for certification as a state-certified residential real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than ~~((one hundred twenty classroom hours of qualifying education as approved by the director. Each applicant must successfully complete a thirty classroom hour course in the basic principles of real estate appraising and a fifteen classroom hour course in the Uniform Standards of Professional Appraisal Practice as part of the one hundred twenty classroom hours of course work: Provided, That effective January 1, 2007, the required number of classroom hours is))~~ two hundred hours in the following core modules:

- (a) Basic appraisal principles, thirty hours.
- (b) Basic appraisal procedures, thirty hours.
- (c) The National USPAP course or equivalent, fifteen hours.
- (d) Residential market analysis and highest and best use, fifteen hours.
- (e) Residential appraiser site valuation and cost approach, fifteen hours.
- (f) Residential sales comparison and income approaches, thirty hours.
- (g) Residential appraiser report writing and case studies, fifteen hours.
- (h) Statistics, modeling and finance, fifteen hours.
- (i) Advanced residential applications and case studies, fifteen hours.
- (j) Appraisal subject matter electives, twenty hours.

(2) Credit towards qualifying education requirements may be obtained via the completion of a degree program in real estate from an accredited degree-granting college or university provided the college or university has had its curriculum reviewed and approved by the Appraiser Qualifications Board.

(3) An original certification as a state-certified residential real estate appraiser shall not be issued to any person who does not possess two thousand five hundred hours of appraisal experience obtained continuously over a period of not less than twenty-four months in Washington or in another state having comparable certification requirements.

~~((3))~~ (4) Effective January 1, ((2008)) 2015, applicants for the certified residential appraiser license must possess a bachelor's degree or higher in any field of study. Through December 31, 2014, certified residential real estate appraiser applicants must possess an associate's degree or higher in any

field of study or, in lieu of the required degree, twenty-one semester credit hours covering the following subject matter courses:

- (a) English composition;
- (b) Principles of economics (micro or macro);
- (c) Finance;
- (d) Algebra, geometry or, higher mathematics;
- (e) Statistics;
- (f) Introduction to computers: Word processing/spreadsheets; and
- (g) Business or real estate law;

as approved by the appraiser qualifications board and the director, in addition to the required core curriculum.

AMENDATORY SECTION (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

WAC 308-125-045 Examination prerequisite state-licensed classification. The state-licensed real estate appraiser classification applies to appraisal of noncomplex one to four residential units having a transaction value less than one million dollars and complex one to four residential units having a transaction value less than two hundred fifty thousand dollars and nonresidential property having a transaction value less than two hundred fifty thousand dollars.

(1) As a prerequisite to taking the examination for certification as a state-licensed real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than ~~((ninety classroom hours of courses in qualifying education as approved by the director. Each applicant must successfully complete a thirty classroom hour course in the basic principles of real estate appraising and a fifteen classroom hour course in the Uniform Standards of Professional Appraisal Practice as part of the seventy five classroom hours of course work: Provided, That effective January 1, 2007, the required number of classroom hours is))~~ one hundred fifty hours in the following core modules:

- (a) Basic appraisal principles, thirty hours.
- (b) Basic appraisal procedures, thirty hours.
- (c) The National USPAP course or equivalent, fifteen hours.
- (d) Residential market analysis and highest and best use, fifteen hours.
- (e) Residential appraiser site valuation and cost approach, fifteen hours.
- (f) Residential sales comparison and income approaches, thirty hours.
- (g) Residential appraiser report writing and case studies, fifteen hours.

(2) Credit toward qualifying education requirements may be obtained via the completion of a degree program in real estate from an accredited degree-granting college or university provided the college or university has had its curriculum reviewed and approved by the Appraiser Qualifications Board.

(3) An original certification as a state-licensed real estate appraiser shall not be issued to any person who does not possess two thousand hours of appraisal experience obtained continuously over a period of not less than twenty-four

months in Washington or in another state having comparable certification requirements.

(4) Effective January 1, 2015, applicants for the state-licensed real estate appraiser license must possess an associate's degree or thirty semester hours of college-level education from an accredited college, junior college, community college, or university.

AMENDATORY SECTION (Amending WSR 11-19-103, filed 9/21/11, effective 10/22/11)

WAC 308-125-050 Educational courses—Preexamination. (1) To be accepted under WAC 308-125-030(1), 308-125-040(1), and 308-125-045(1), courses must:

(a) Be a minimum of fifteen classroom hours in length;
 (b) Include an examination;
 (c) Be directly related to real estate appraising; and
 (d) Be approved by the director as identified in the appraiser program's publication *Approved Courses, Real Estate Appraisers*; or

(e) Be approved by the appraiser qualifications board and approved by the director.

(2) The following limitations may apply to course work submitted to the department for approval:

(a) Distance education may be acceptable to meet classroom hour requirements only if each course meets the following conditions:

(i) The course provides interaction. Interaction is a reciprocal environment where the student has verbal or written communication with the instructor;

(ii) An individual successfully completes a closed-book written, proctored examination administered at a location by an official approved by the college or university; and

(iii) Content and course delivery mechanism approvals are obtained from the appraisal qualifications board or an accredited college, community college, or university that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States Secretary of Education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board and approved by the director.

(b) An applicant shall not receive "dual credit" for courses that have the same or very similar content and are deemed comparable by the department, even if an applicant completes the courses through different course providers.

(3) Copies of official transcript of college records or certificates of course completion will be considered as satisfactory evidence for education requirements.

(4) Preexamination review seminars or examination preparation seminars will not be approved for clock hour credit.

(5) An application shall be submitted for approval not less than ninety days preceding the course start date. Course approval expiration shall be three years from the date of approval, except for the Uniform Standards of Professional Appraisal Practice courses or seminars having a definite date.

(6) All courses approved by the appraiser qualifications board will continue to be accepted by the department as approved courses until the expiration date.

(7) Appraisal course providers who have received the appraiser qualifications board's course approval are not required to submit course material or content materials to the department for approval. The course provider shall submit a secondary provider course content approval application to the department.

AMENDATORY SECTION (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

WAC 308-125-070 Experience requirements. (1) A minimum of two years (twenty-four months) full-time experience within five years of application is required for the state licensed and certified residential appraiser. Certified general applicants must accumulate three thousand hours within a minimum of thirty months and a maximum of seven years. However, no more than one thousand five hundred hours may be credited in any consecutive twelve months for any of the licensing categories.

(2) Any work product claimed for experience credit dated January 1, 1990, and later shall conform to the Uniform Standards of Professional Appraisal Practice in effect at the time the appraisal is completed.

(a) Reports shall be in writing.

(b) An appraisal work file must be available to the director to substantiate work performed.

(3) A registered trainee may gain experience under the supervision of no more than six supervisory appraisers during his/her trainee period.

(4) The department may request appraiser work files to verify, confirm, or compare entries made on the experience log. Failure to provide work files to the department upon its request may disqualify the reports as qualifying experience.

~~((4))~~ (5) An applicant for certification or license shall certify, under penalty of perjury, the completion of the required experience.

~~((5))~~ (6) Appraisal work qualifying for appraisal experience includes, but is not limited to, the following: Fee and staff appraisal, ad valorem tax appraisal, appraisal review, appraisal analysis, appraisal consulting, highest and best use analysis, feasibility analysis/study.

~~((6))~~ (7) The department may require a supervisory appraiser to certify, under penalty of perjury, the applicant's work experience.

~~((7))~~ (8) The department may request written reports or work files to verify an applicant's experience.

AMENDATORY SECTION (Amending WSR 02-10-022, filed 4/23/02, effective 5/24/02)

WAC 308-125-085 Temporary practice. (1) A real estate appraiser from another state who is licensed or certified by another state ~~((may)) shall~~ apply for registration to receive temporary licensing or certification for a single assignment in Washington by paying a fee ~~((, providing a license history;))~~ and filing an application with the department on a form provided by the department. An applicant may be required to

provide a statement from the state in which the person is licensed or certified establishing licensure or certification.

(2) Licensing and certification privileges granted under the provisions of this section shall expire six months from issuance. Licensing or certification shall not be renewed. However, an applicant may receive an extension of a temporary practice permit to complete ~~((an))~~ the assignment, provided that a written request is received by the department prior to the expiration date, stating the reason for the extension.

(3) Persons granted temporary licensing or certification privileges under this section shall not advertise or otherwise hold themselves out as being licensed or certified by the state of Washington.

(4) Persons granted temporary licensure or certification are subject to all provisions under this chapter. ~~((A))~~ Each temporary permit issued under this section allows an appraiser to perform an independent appraisal service~~((s))~~ required by a contract for appraisal services submitted to the department with the application for temporary permit.

(5) An appraiser may obtain a maximum of three temporary practice permits in a calendar year.

AMENDATORY SECTION (Amending WSR 10-09-024, filed 4/13/10, effective 5/14/10)

WAC 308-125-090 Continuing education required.

(1) As a prerequisite to renewal of certification ~~((or))~~, licensure, or registration, the holder of a certificate ~~((or))~~, license, or registration shall present evidence satisfactory to the director of successful completion of the continuing education requirements of this section.

(2) The continuing education requirements for renewal of certification ~~((or))~~, licensure, or registration shall be the completion by the applicant of twenty-eight hours of instruction in courses or seminars which have received the approval of the director. Courses must be completed within the term of certification ~~((or))~~, licensure, or registration immediately preceding renewal. An applicant shall not receive credit in consecutive renewals for courses that have the same or very similar content and are deemed comparable by the department. The holder of a certificate ~~((or))~~, license, or registration will present evidence of successful completion of the seven-hour National USPAP update course or its equivalent.

(3) In order for courses or seminars to be accepted under subsection (2) of this section, the course or seminar must be a minimum of two hours in length and be directly related to real estate appraising. However, a maximum of one-half of the continuing education hours required for renewal can be in two-hour seminars or courses.

(4) An examination is not required for courses or seminars taken for continuing education classroom hours.

(5) Up to one-half of the requirement under subsection (2) of this section may be met by participation other than as a student in educational process and programs approved by the director including teaching, program development, and authorship of textbooks and other written instructional materials. A licensee or certificate holder may receive continuing education credit for teaching an approved real estate appraisal course. Once a licensee or certificate holder has

received credit for teaching an approved real estate appraiser course, the credential holder shall not receive credit for teaching that course or any substantially similar course on any subsequent occasion, with the exception of the Uniform Standards of Professional Appraisal Practice, USPAP, 7-hour update.

(6) Courses or seminars taken to satisfy the continuing education requirement for real estate appraisers, should include coverage of real estate appraisal related topics, such as:

- (a) Ad valorem taxation.
- (b) Arbitrations, dispute resolution.
- (c) Business courses related to practice of real estate appraisal and consulting.
- (d) Construction estimating.
- (e) Ethics and standards of professional practice, USPAP.
- (f) Land use planning, zoning, and taxation.
- (g) Management, leasing, brokerage, timesharing.
- (h) Property development, partial interests.
- (i) Real estate appraisal (valuations/evaluations).
- (j) Real estate financing and investment.
- (k) Real estate law, easements and legal interests.
- (l) Real estate litigation, damages and condemnation.
- (m) Real estate related computer applications.
- (n) Real estate securities and syndication.
- (o) Real property exchange.
- (p) Appraisal and consulting report writing.
- (q) Green buildings.
- (r) Seller concessions.
- (s) Developing opinions of real property value in appraisals that also include personal property and/or business value.

(t) Such other presentations approved by the director.

(7) The director may approve continuing education credit for attendance at one real estate appraiser commission meeting of no more than seven hours.

(8) The director may defer completion of continuing education for ~~((licensees or))~~ the holder of a certificate ~~((holders))~~, license, or registration returning from military service active duty and place the registration, license, or certificate in an active status for a period of ninety days pending completion of education. If the ~~((licensee or certificate))~~ holder of a certificate, license, or registration fails to comply with the continuing education requirement within said ninety days, the registration, license, or certificate will revert to an expired status.

(9) A licensee or certificate holder may receive continuing education credit for teaching an approved real estate appraisal course. One hour of education credit for each hour of teaching an approved real estate appraisal course shall be given. Once a licensee or certificate holder has received credit for teaching an approved real estate appraisal course, the credential holder shall not receive credit for teaching that course or any substantially similar course on any subsequent occasion.

AMENDATORY SECTION (Amending WSR 08-17-016, filed 8/8/08, effective 9/8/08)

WAC 308-125-095 Responsibilities of the appraiser supervisor. (1) A certified real estate appraiser licensed by the state of Washington may supervise trainees in accordance with the following provisions:

(a) The certified real estate appraiser is in good standing and not subject to any disciplinary action which affects their legal eligibility to engage in appraisal practice within the three years preceding registration to become a supervisory appraiser.

(b) Effective January 1, 2015, the certified real estate appraiser shall have been certified for a minimum of three years prior to becoming a supervisory appraiser.

(c) Effective January 1, 2015, the certified real estate appraiser shall have completed a course that, at a minimum, complies with the specification for course content established by the Appraiser Qualifications Board. This course must be completed prior to supervising a registered appraiser trainee.

(d) Not more than three real estate appraiser trainees may be supervised in accordance with the appraiser qualifications board standards unless written authorization by the department is granted to exceed that number of trainees at any one time.

~~((b))~~ (e) Supervision of trainees in the process of appraising real property shall occur within the boundaries of the state of Washington and comply with jurisdictional and established agreements with other states. If a trainee is supervised by a certified appraiser who is licensed in both the state of Washington and with another state or has a temporary license in another state; and the trainee is registered as a trainee in that other state by either temporary permit, license, or registration, then the appraisal assignments shall qualify as work experience on the experience log.

~~((e))~~ (f) Authorization to exceed supervision of three trainees may be granted by the director upon approval of a written request and under the provisions of subsection (2) of this section.

~~((f))~~ (g) A registered real estate appraiser trainee may assist in the completion of an appraisal report, including determination of an opinion of value and may sign the appraisal report, provided that he/she is actively and personally supervised by a state-certified real estate appraiser, and provided that the appraisal report is reviewed and signed by the state-certified real estate appraiser; and provided the state-certified appraiser accepts total responsibility for the appraisal report.

~~((g))~~ (h) The certified appraiser shall:

(i) Personally inspect with the trainee, at a minimum, the interior of twenty-five subject properties, or until the supervisory appraiser considers the trainee competent.

(ii) Personally review and verify each appraisal report prepared by the trainee as entered on the trainee experience log as qualifying work experience prior to the log being submitted to the department by the supervised trainee. The trainee shall be entitled to obtain copies of the appraisal reports in which the trainee provided appraisal assistance.

(iii) Personally review and verify each appraisal report prepared by a state licensed or certified residential appraiser as entered on the qualifying work experience log prior to the

log being submitted to the department by the licensee. The state licensed or certified residential appraiser shall be entitled to obtain copies of the appraisal reports in which the state licensed and certified residential appraiser provided appraisal assistance.

(iv) Comply with all USPAP requirements.

(v) Maintain a separate "properties inspected with trainee" log for each supervised trainee. This log must be made available to the department upon request and is to be submitted with trainee's application for license or certification.

(vi) Register with the department as a supervisory appraiser and include the names of the registered real estate appraiser trainees being supervised. Registration must be five business days prior to the start of supervision. The supervisory appraiser shall notify the department when they are no longer a supervisory appraiser of a trainee, with such notice including the name, address, and registration number of the registered trainee.

(2) Authorization may be granted by the director to a certified appraiser to exceed the number of trainees allowed to be supervised providing:

(a) The certified appraiser has more than five years certified experience.

(b) The certified appraiser shall make a written application to the department requesting to supervise not more than three trainees with less than one year experience; and three trainees with more than one year experience; and five trainees with greater than two years experience. The total number of supervised trainees shall not exceed eight for all experience levels at any one time.

(c) The certified appraiser shall prepare and maintain trainee progress reports and make them available to the department until such time as the trainee becomes certified or licensed or after two years has lapsed since supervising the trainee.

(d) The certified appraiser shall provide to the department a mentoring plan for consideration prior to the department authorizing supervision of more than three trainees.

AMENDATORY SECTION (Amending WSR 93-17-020, filed 8/10/93, effective 9/10/93)

WAC 308-125-140 Passing exam score. ~~((A))~~ The minimum scaled score ((of seventy is)) required to pass the real estate appraiser examination is established by the Appraiser Qualifications Board.

WSR 13-13-043

PROPOSED RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed June 14, 2013, 3:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-09-070.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-251 in response to the teacher/principal evaluation system enacted by the 2012 legislature.

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: In 2012, the legislature passed requirements for a new teacher evaluation system. Requirements for licensure related to the evaluations system go into effect in September 2013.

Reasons Supporting Proposal: Strengthens requirements; stakeholder.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], 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.

June 12, 2013.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 13-11-072, filed 5/16/13, effective 6/16/13)

WAC 181-79A-251 Residency and professional certification. Renewal and reinstatement.

(1) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, residency certificates have the following options for renewal past the first three-year certificate:

(A) Candidates who have attempted and failed the professional certificate assessment are eligible for a two-year renewal;

(B) Candidates who have not been employed or employed less than full-time as a teacher during the dated, three-year residency certificate may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio or may permit their certificate to lapse until such time they register for the professional certificate assessment;

(C) Candidates whose three-year residency certificate has lapsed may receive a two-year renewal by submitting an

affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certificate assessment;

(D) Individuals who complete a National Board Certification assessment but do not earn National Board Certification, may use that completed assessment to renew the residency certificate for two years.

(ii) A residency certificate expires after the first renewal if the candidate has not registered for and submitted a portfolio assessment prior to June 30th of the expiration year, to achieve the professional certificate, provided: When the first two-year renewal on residency certificates expires, teachers have two renewal options:

(A) Teachers who were employed but failed the professional certification assessment, may receive a second two-year renewal;

(B) Teachers who were unemployed or employed less than full-time during the first two-year renewal may permit their certificate to lapse and receive a second two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certification assessment.

(C) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to renew the residency certificate for two years in lieu of submitting an affidavit to the certification office confirming that they will register and submit the Washington uniform assessment portfolio as per this section, WAC 181-79A-251.

(iii) Teachers who hold expired residency certificates may be reinstated by having a district request, under WAC 181-79A-231, a transitional certification not less than five years following the final residency expiration: Provided, That the teacher registers and passes the professional certification assessment within two years.

(iv) Teachers that hold a dated residency certificate prior to September 2011 that have expiration dates past September 2011 are subject to the same renewal options as described in (a)(ii) and (iii) of this subsection.

(b) Principals/program administrators(-) may permit their residency certificate to lapse and/or renew their residency certificate in one of the following ways:

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who ~~((do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a)))~~ are not in the role of principal or program administrator may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally

accredited institution of higher education taken since the issuance of the residency certificate.

(c) School counselors and school psychologists((-)) may permit their residency certificate to lapse and/or renew their residency certificate in one of the following ways:

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who ~~((do not qualify for admission to a professional certificate program under WAC 181-78A-535(3)(a)))~~ are not in the role of school counselor or school psychologist may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(iii) School psychologists in the process of obtaining the NCSP may apply for a one-time two-year renewal with verification of NCSP submission.

(iv) School psychologists with residency certificates dated to expire June 30, 2013, 2014, or 2015 may apply until June 30, 2016, for a one-time two-year extension.

(2) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five-year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC or by completing the professional growth plan as defined in WAC 181-79A-030. Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours: Provided, that professional certificates issued under rules prior to September 1, 2014, retain the option of clock hours or professional growth plans for renewal. An expired professional certificate issued under rules in effect prior to September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in WAC 392-121-262.

(ii) Individuals not employed as a teacher in a public school or approved private school holding a professional teaching certificate may have their professional certificate renewed for a five-year period by the completion of:

(A) Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-540; or

(B) One hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-79A-207; or

(C) Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207. Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(ii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a principal, assistant principal or program administrator in a public school or approved private school by:

(A) Completion of four professional growth plans developed annually since the certificate was issued in collaboration with a minimum of three certificated colleagues that documents formalized learning opportunities and professional development activities that relate to the six standards and "career level" benchmarks defined in WAC 181-78A-540(1). Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(B) Documented evidence of results of the professional growth plan on student learning.

(ii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or approved private school may have their professional certificate renewed for a five-year period by the completion of:

(A) Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-540(1) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(1); or

(C) Completion of four professional growth plans developed annually since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2). Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(c) School counselors and school psychologists.

(i) For certificates issued under rules in effect prior to September 1, 2014, a valid professional certificate may be renewed for additional five-year periods by:

(A) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9);

(B) Completion of four professional growth plans that are developed annually since the certificate was issued in collaboration with a minimum of three certificated colleagues or supervisor, and that documents formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours; or

(C) An expired professional certificate issued under rules in effect prior to September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application.

(ii) Beginning September 1, 2014, a valid professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor or school psychologist in a public school, approved private school, or in a state agency which provides educational services to students by completion of four professional growth plans developed annually since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-

78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(A) Individuals not employed as a school counselor or school psychologist in a public school or approved private school may have their professional certificate renewed for an additional five-year period by:

(B) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(C) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2);

(D) Completion of four annual professional growth plans developed since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours;

(E) An expired professional certificate issued under rules in effect after September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application.

(iii) Provided, That a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater; or

(iv) Provided, That a school psychologist professional certificate may be renewed based on the possession of a valid national certified school psychology certificate issued by the national association of school psychologists at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national certified school psychology certificate, whichever is greater.

(d) Provided, any educator holding a professional certificate in (a), (b), or (c) of this subsection, which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by (a)(ii)(C), (b)(ii)(A), and (c)(ii) of this subsection. Individuals with valid certificates must show completion of the hours above since the professional certificate was issued. Individu-

als with an expired professional certificate must complete the above hours within the five years prior to the date of the renewal application.

(e) For educators holding multiple certificates in (a), (b), or (c) of this subsection, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(f) The one time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time.

WSR 13-13-047

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed June 17, 2013, 9:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-038.

Title of Rule and Other Identifying Information: Amend the serious infractions (chapter 137-25 WAC) and prisons discipline (chapter 137-28 WAC) WACs to align the definitions of pornography with chapter 137-48 WAC, Offender mail.

Hearing Location(s): ELG Building, Room 1028A, 7443 Linderson Way S.W., Tumwater, WA 98501, on July 23, 2013, at 1:30 p.m.

Date of Intended Adoption: July 23, 2013.

Submit Written Comments to: John Nispel, P.O. Box 41114, Olympia, WA 98504-1114, e-mail john.nispel@doc.wa.gov, fax (360) 664-2009, by July 18, 2013

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Align the definitions of pornography with those in the offender mail WAC.

Reasons Supporting Proposal: Consistency in definitions is required.

Statutory Authority for Adoption: RCW 72.01.090.

Statute Being Implemented: RCW 72.65.100 and 72.09.130.

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

Name of Proponent: Marcia McMahon, disciplinary hearing coordinator, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Marcia McMahon, Tumwater, (360) 725-8732.

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

A cost-benefit analysis is not required under RCW 34.05.328. No impact outside the department offenders.

June 17, 2013
Bernard Warner
Secretary

AMENDATORY SECTION (Amending WSR 09-01-195, filed 12/24/08, effective 1/24/09)

WAC 137-25-020 Definitions.

• For the purposes of this chapter, the following words have the following meanings:

Abusive sexual contact - An incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:

• Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

Adult correctional institution and institution - A facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.

Aggravated assault - An assault resulting in physical injury and requiring medical care (see definition of medical care).

Assault - A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

Attempted suicide - An unsuccessful attempt to kill oneself as determined by a medical or mental health professional.

Attempt - Putting forth an effort to commit any infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault.

Bodily harm - Physical pain or injury, illness, or impairment of physical condition.

Cell tag - If contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.

Conspiracy - An agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.

Deputy secretary - The deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.

Discovery - When a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.

Earned time - Means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.

Earned release time - Means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.

Good conduct time credits - That portion of an inmate's potential reduction to minimum term which is authorized by

RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

Hearing officer - Staff member(s) designated by the superintendent or hearings program administrator to conduct disciplinary hearings.

Infraction - Commission of, attempt to commit, or conspiracy with another to commit any violation of rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.

Infraction review officer - Staff member(s) designated by the superintendent to review a serious infraction.

Lesser included offense - Any infraction that must necessarily have been committed in order to commit another infraction.

Medical care - Any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.

Mental health professional - An individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at affecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.

Mitigating factors - Factors to be considered by the infracting officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

Possession - Established when an item(s) is found on a person or in an area which is under the control of the individual(s) charged.

Promptly - To act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

Secretary - The secretary of the Washington state department of corrections, or the secretary's designee.

Sexual harassment - Any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

Sexual assault - An incident in which the act occurs against the will of the victim (without his/her consent and/or he/she is unable to consent or refuse) as the result of the threat of the force or force used to obtain compliance. A sexual assault includes one or more of the following behaviors:

- Contact between the penis and the vagina or the penis and the anus involving penetration. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit;

- Contact between the mouth and the penis, vagina and/or anus;
- Penetration of the anal or genital opening of another person by hand, finger or other object.

Sexually explicit - (~~Means any pictorial representation that is intended for sexual gratification and shows male or female genitalia, full frontal nudity, or depicts one or more of the following sexual behaviors:~~

- ~~• One or more of the participants appears to be nonconsenting;~~

- ~~• One or more of the participants appears to be acting in a forceful, threatening, or violent manner;~~

- ~~• One or more of the participants appears to be dominating one or more of the other participants or one or more of the participants appears to be in a submissive role or one or more of the participants appears to be degraded, humiliated, or appears to willingly engage in behavior that is degrading or humiliating;~~

- ~~• One of the participants appears to be a minor, or a minor alone is depicted in a sexually suggestive way;~~

- ~~• Bodily excretory behavior which appears to be sexual in nature;~~

- ~~• Bestiality, sadomasochistic behavior, and/or bondage;~~

or

- ~~• Depicts sexual behaviors including, but not limited to, intercourse/penetration, sodomy, fellatio, cunnilingus, anilingus, or masturbation.~~

The term sexually explicit also refers to those written materials that are intended for sexual gratification and describe one or more of the above sexual behaviors as the predominant theme of the publication or letter.) Materials consist of any item displaying, portraying, depicting, or describing:

(a) Nudity, which includes exposed/visible (in whole or part, including under or through translucent/thin materials providing intimate physical detail) genitals/genitalia, anus, and/or female/transgender breast nipple(s);

(b) A sex act(s) which includes, but is not limited to, genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration, genital or anal contact/penetration with an inanimate object, masturbation, sadistic/masochistic abuse, bondage, bestiality, and/or bodily excretory behavior which appears to be sexual in nature;

(c) A participant(s) who appears to be nonconsenting, dominated, degraded, humiliated, or in a submissive role, and/or acting in a forceful, threatening, dominating, or violent manner which appears to be sexual in nature; and/or

(d) Minor(s), or models depicting minors, in a sexually suggestive setting/pose/attire.

Staff member - For purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.

Superintendent - Superintendent of an adult correctional institution or the superintendent's designee.

Working days - Monday through Friday, excluding weekends and holidays.

AMENDATORY SECTION (Amending WSR 09-01-195, filed 12/24/08, effective 1/24/09)

WAC 137-28-160 Definitions.

• For the purposes of this chapter, the following words have the following meanings:

Abusive sexual contact - An incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:

• Intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

Adult correctional institution and institution - A facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.

Aggravated assault - An assault resulting in physical injury and requiring medical care (see definition of medical care).

Assault - A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to weapons, body parts, food products or bodily secretions.

Attempted suicide - An unsuccessful attempt to kill oneself as determined by a medical or mental health professional.

Attempt - Putting forth an effort to commit any infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault.

Bodily harm - Physical pain or injury, illness, or impairment of physical condition.

Cell tag - If contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.

Conspiracy - An agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.

Deputy secretary - The deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.

Discovery - When a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.

Earned time - Means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.

Earned release time - Means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.

Good conduct time credits - That portion of an inmate's potential reduction to minimum term which is authorized by

RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

Hearing officer - Staff member(s) designated by the superintendent to conduct disciplinary hearings.

Infraction - Commission of, attempt to commit, or conspiracy with another to commit any violation of prison rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.

Infraction review officer - Staff member(s) designated by the superintendent to review a serious infraction.

Lesser included offense - Any infraction that must necessarily have been committed in order to commit another infraction.

Medical care - Any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.

Mental health professional - An individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at effecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.

Mitigating factors - Factors to be considered by the infracting officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

Possession - Established when an item(s) is found on a person or in an area which is under the control of the individual(s) charged.

Promptly - To act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

Secretary - The secretary of the Washington state department of corrections, or the secretary's designee.

Sexual harassment - Any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

Sexually explicit - (~~Means any pictorial representation that is intended for sexual gratification and shows male or female genitalia, full frontal nudity, or depicts one or more of the following sexual behaviors:~~

~~• One or more of the participants appears to be nonconsenting;~~

~~• One or more of the participants appears to be acting in a forceful, threatening, or violent manner;~~

~~• One or more of the participants appears to be dominating one or more of the other participants or one or more of the participants appears to be in a submissive role or one or more~~

~~of the participants appears to be degraded, humiliated, or appears to willingly engage in behavior that is degrading or humiliating;~~

~~• One of the participants appears to be a minor, or a minor alone is depicted in a sexually suggestive way;~~

~~• Bodily excretory behavior which appears to be sexual in nature;~~

~~• Bestiality, sadomasochistic behavior, and/or bondage;~~

~~or~~
~~• Depicts sexual behaviors including, but not limited to, intercourse/penetration, sodomy, fellatio, cunnilingus, anilingus, or masturbation.~~

~~The term sexually explicit also refers to those written materials that are intended for sexual gratification and describe one or more of the above sexual behaviors as the predominant theme of the publication or letter.)) Materials consist of any item displaying, portraying, depicting, or describing:~~

~~(a) Nudity, which includes exposed/visible (in whole or part, including under or through translucent/thin materials providing intimate physical detail) genitals/genitalia, anus, and/or female/transgender breast nipple(s);~~

~~(b) A sex act(s) which includes, but is not limited to, genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration, genital or anal contact/penetration with an inanimate object, masturbation, sadistic/masochistic abuse, bondage, bestiality, and/or bodily excretory behavior which appears to be sexual in nature;~~

~~(c) A participant(s) who appears to be nonconsenting, dominated, degraded, humiliated, or in a submissive role, and/or acting in a forceful, threatening, dominating, or violent manner which appears to be sexual in nature; and/or~~

~~(d) Minor(s), or models depicting minors, in a sexually suggestive setting/pose/attire.~~

Staff member - For purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.

Superintendent - Superintendent of an adult correctional institution or the superintendent's designee.

Working days - Monday through Friday, excluding weekends and holidays.

WSR 13-13-049

PROPOSED RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed June 17, 2013, 1:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-09-060.

Title of Rule and Other Identifying Information: WAC 182-501-0070 Health care coverage—Noncovered services, 182-501-0160 Exception to rule—Request for a noncovered health care service, 182-502-0160 Billing a client, 182-530-1050 Definitions, 182-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies, 182-530-2200 How the medicaid agency develops and maintains the formulary, 182-

530-2300 The medicaid agency's nonformulary justification process, and 182-531-0100 Scope of coverage for physician-related and health care professional services—General.

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 July 23, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 24, 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, fax (360) 586-9727, by 5:00 p.m. on July 23, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 15, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA has concluded that implementing a drug formulary for fee-for-service medicaid client who remain after the transition of SSI clients to managed care is not the most effective use of state resources at this time.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Charles Agte, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1301.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee (JARRC) 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 JARRC or applied voluntarily.

June 17, 2013

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-18-062, filed 8/31/12, effective 10/1/12)

WAC 182-501-0160 Exception to rule—Request for a noncovered health care service. A client and/or the client's provider may request the medicaid agency or its designee to pay for a noncovered health care service. This is called an exception to rule (ETR). ((ETR does not apply to nonformulary drugs (see WAC 182-530-2300).))

(1) The agency or its designee cannot approve an exception to rule if the requested service is excluded under state statute.

(2) The item or service(s) for which an exception is requested must be of a type and nature which falls within accepted standards and precepts of good medical practice;

(3) All exception requests must represent cost-effective utilization of medical assistance program funds as determined by the agency or its designee;

(4) A request for an exception to rule must be submitted to the agency or its designee in writing within ninety days of the date of the written notification denying authorization for the noncovered service. For the agency or its designee to consider the exception to rule request:

(a) The client and/or the client's health care provider must submit sufficient client-specific information and documentation to the agency's medical director or designee which demonstrate the client's clinical condition is so different from the majority that there is no equally effective, less costly covered service or equipment that meets the client's need(s).

(b) The client's health care professional must certify that medical treatment or items of service which are covered under the client's medical assistance program and which, under accepted standards of medical practice, are indicated as appropriate for the treatment of the illness or condition, have been found to be:

(i) Medically ineffective in the treatment of the client's condition; or

(ii) Inappropriate for that specific client.

(5) Within fifteen business days of receiving the request, the agency or its designee sends written notification to the provider and the client:

(a) Approving the exception to rule request;

(b) Denying the exception to rule request; or

(c) Requesting additional information.

(i) The additional information must be received by the agency or its designee within thirty days of the date the information was requested.

(ii) The agency or its designee approves or denies the exception to rule request within five business days of receiving the additional information.

(iii) If the requested information is insufficient or not provided within thirty days, the agency or its designee denies the exception to rule request.

(6) The agency's medical director or designee evaluates and considers requests on a case-by-case basis. The agency's medical director has final authority to approve or deny a request for exception to rule.

(7) Clients do not have a right to a fair hearing on exception to rule decisions.

AMENDATORY SECTION (Amending WSR 12-18-062, filed 8/31/12, effective 10/1/12)

WAC 182-530-1050 Definitions. In addition to the definitions and abbreviations found in chapter 182-500 WAC, Medical definitions, the following definitions apply to this chapter.

"Active ingredient" - The chemical component of a drug responsible for a drug's prescribed/intended therapeutic

effect. The medicaid agency or its designee limits coverage of active ingredients to those with an eleven-digit national drug code (NDC) and those specifically authorized by the agency or its designee.

"Actual acquisition cost (AAC)" - The net cost a provider paid for a drug, device, or drug-related supply marketed in the package size purchased. The AAC includes discounts, rebates, charge backs and other adjustments to the price of the drug, device or drug-related supply, but excludes dispensing fees.

"Administer" - Includes the direct application of a prescription drug or device by injection, insertion, inhalation, ingestion, or any other means, to the body of a patient by a practitioner, or at the direction of the practitioner.

"Appointing authority" - For the evidence-based prescription drug program of the participating agencies in the state-operated health care programs, the following persons acting jointly: The director of the health care authority (HCA), the secretary of the department of social and health services (DSHS), and the director of the department of labor and industries (L&I).

"Automated authorization" - Adjudication of claims using submitted NCPDP data elements or claims history to verify that the medicaid agency's or its designee's authorization requirements have been satisfied without the need for the medicaid agency or its designee to request additional clinical information.

"Automated maximum allowable cost (AMAC)" - The rate established by the medicaid agency or its designee for a multiple-source drug that is not on the maximum allowable cost (MAC) list and that is designated by two or more products at least one of which must be under a federal drug rebate contract.

"Average manufacturer price (AMP)" - The average price paid to a manufacturer by wholesalers for drugs distributed to retail pharmacies.

"Average sales price (ASP)" - The weighted average of all nonfederal sales to wholesalers net of charge backs, discounts, rebates, and other benefits tied to the purchase of the drug product, whether it is paid to the wholesaler or the retailer.

"Average wholesale price (AWP)" - The average price of a drug product that is calculated from wholesale list prices nationwide at a point in time and reported to the medicaid agency or its designee by the agency's drug file contractor.

"Combination drug" - A commercially available drug including two or more active ingredients.

"Compendia of drug information" includes the following:

(1) The American Hospital Formulary Service Drug Information;

(2) The United States Pharmacopeia Drug Information; and

(3) DRUGDEX Information System.

"Compounding" - The act of combining two or more active ingredients or adjusting therapeutic strengths in the preparation of a prescription.

"Deliver or delivery" - The transfer of a drug or device from one person to another.

"Dispense as written (DAW)" - An instruction to the pharmacist forbidding substitution of a generic drug or a therapeutically equivalent product for the specific drug product prescribed.

"Dispensing fee" - The fee the medicaid agency or its designee sets to pay pharmacy providers for dispensing agency-covered prescriptions. The fee is the agency's maximum reimbursement for expenses involved in the practice of pharmacy and is in addition to the agency's reimbursement for the costs of covered ingredients.

"Drug evaluation matrix" - The criteria-based scoring sheet used to objectively and consistently evaluate the food and drug administration (FDA) approved drugs to determine drug coverage status.

"Drug file" - A list of drug products, pricing and other information provided to the medicaid agency or its designee and maintained by a drug file contractor.

"Drug file contractor" - An entity which has been contracted to provide regularly updated information on drugs, devices, and drug-related supplies at specified intervals, for the purpose of pharmaceutical claim adjudication. Information is provided specific to individual national drug codes, including product pricing.

"Drug rebates" - Reimbursements provided by pharmaceutical manufacturers to state medicaid programs under the terms of the manufacturers' agreements with the Department of Health and Human Services (DHHS).

"Drug-related supplies" - Nondrug items necessary for the administration, delivery, or monitoring of a drug or drug regimen.

"Drug use review (DUR)" - A review of covered outpatient drug use that assures prescriptions are appropriate, medically necessary, and not likely to result in adverse medical outcomes.

"Effectiveness" - The extent to which a given intervention is likely to produce beneficial results for which it is intended in ordinary circumstances.

"Efficacy" - The extent to which a given intervention is likely to produce beneficial effects in the context of the research study.

"Emergency kit" - A set of limited pharmaceuticals furnished to a nursing facility by the pharmacy that provides prescription dispensing services to that facility. Each kit is specifically set up to meet the emergency needs of each nursing facility's client population and is for use during those hours when pharmacy services are unavailable.

"Endorsing practitioner" - A practitioner who has reviewed the Washington preferred drug list (PDL) and has enrolled with the health care authority (HCA), agreeing to allow therapeutic interchange (substitution) of a preferred drug for any nonpreferred drug in a given therapeutic class on the Washington PDL.

"Estimated acquisition cost (EAC)" - The medicaid agency's estimate of the price providers generally and currently pay for a drug marketed or sold by a particular manufacturer or labeler.

"Evidence-based" and "evidenced-based medicine (EBM)" - 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 population-based coverage policies or individual medical necessity decisions.

"Evidence-based practice center" - A research organization that has been designated by the Agency for Healthcare Research and Quality (AHRQ) of the U.S. government to conduct systematic reviews of all the evidence to produce evidence tables and technology assessments to guide health care decisions.

"Federal upper limit (FUL)" - The maximum allowable reimbursement set by the Centers for Medicare and Medicaid Services (CMS) for a multiple-source drug.

~~("Formulary" - All drugs covered under WAC 182-530-2000 and not removed from the formulary by the DUR board (see WAC 182-530-2200).~~

~~"Formulary drug" - A drug covered under WAC 182-530-2000 and not removed from the formulary by the DUR board with respect to the treatment of a specific disease or condition for an identified population (see WAC 182-530-2200-))~~

"Four brand name prescriptions per calendar month limit" - The maximum number of paid prescription claims for brand name drugs that the medicaid agency or its designee allows for each client in a calendar month without a complete review of the client's drug profile.

"Generic drug" - A nonproprietary drug that is required to meet the same bioequivalency tests as the original brand name drug.

"Inactive ingredient" - A drug component that remains chemically unchanged during compounding but serves as the:

(1) Necessary vehicle for the delivery of the therapeutic effect; or

(2) Agent for the intended method or rate of absorption for the drug's active therapeutic agent.

"Ingredient cost" - The portion of a prescription's cost attributable to the covered drug ingredients or chemical components.

"Innovator multiple source drug" - As set forth in Section 1927 (k)(7)(A)(ii) of the Social Security Act, includes all covered outpatient drugs approved under a new drug application (NDA), product license approval (PLA), establishment license approval (ELA), or antibiotic drug approval (ADA). A covered outpatient drug marketed by a cross-licensed producer or distributor under the approved new drug application will be included as an innovator multiple source drug when the drug product meets this definition.

"Less than effective drug" or "DESI" - A drug for which:

(1) Effective approval of the drug application has been withdrawn by the Food and Drug Administration (FDA) for safety or efficacy reasons as a result of the drug efficacy study implementation (DESI) review; or

(2) The secretary of the Department of Health and Human Services (DHHS) has issued a notice of an opportunity for a hearing under section 505(e) of the federal Food, Drug, and Cosmetic Act on a proposed order of the secretary to withdraw approval of an application for such drug under such section because the secretary has determined the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling.

"Long-term therapy" - A drug regimen a client receives or will receive continuously through and beyond ninety days.

"Maximum allowable cost (MAC)" - The maximum amount that the medicaid agency or its designee reimburses for a drug, device, or drug-related supply.

"Medically accepted indication" - Any use for a covered outpatient drug:

(1) Which is approved under the federal Food, Drug, and Cosmetic Act; or

(2) The use of which is supported by one or more citations included or approved for inclusion in any of the compendia of drug information, as defined in this chapter.

"Modified unit dose delivery system" (also known as blister packs or "bingo/punch cards") - A method in which each patient's medication is delivered to a nursing facility:

(1) In individually sealed, single dose packages or "blisters"; and

(2) In quantities for one month's supply, unless the prescriber specifies a shorter period of therapy.

"Multiple-source drug" - A drug marketed or sold by:

(1) Two or more manufacturers or labelers; or

(2) The same manufacturer or labeler:

(a) Under two or more different proprietary names; or

(b) Under a proprietary name and a generic name.

"National drug code (NDC)" - The eleven-digit number the FDA and manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The NDC is composed of digits in 5-4-2 groupings. The first five digits comprise the labeler code assigned to the manufacturer by the Food and Drug Administration (FDA). The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

"Noncontract drugs" - Are drugs manufactured or distributed by manufacturers/labelers who have not signed a drug rebate agreement with the federal Department of Health and Human Services.

~~("Nonformulary drug" - A drug:~~

~~(a) Removed from the formulary by the DUR board with respect to treatment of a specific disease or condition for an identified population (see WAC 182-530-2200);~~

~~(b) Prescribed for the treatment of the specific disease or condition identified in (a) of this definition nonformulary drug;~~

~~(c) Prescribed for a client in the identified population in (a) of this definition nonformulary drug; and~~

~~(d) Included on the agency's nonformulary list with a written explanation of the basis for the drug's removal from the formulary.~~

~~"Nonformulary justification" or "NFJ" - See WAC 182-530-2300.~~

~~"Nonformulary list" - The agency's list of nonformulary drugs and the reasons for removal from the formulary by the DUR board.)~~

"Nonpreferred drug" - A drug that has not been selected as a preferred drug within the therapeutic class(es) of drugs on the preferred drug list.

"Obsolete NDC" - A national drug code replaced or discontinued by the manufacturer or labeler.

"Over-the-counter (OTC) drugs" - Drugs that do not require a prescription before they can be sold or dispensed.

"Peer reviewed medical literature" - A research study, report, or findings regarding the specific use of a drug that has been submitted to one or more professional journals, reviewed by experts with appropriate credentials, and subsequently published by a reputable professional journal. A clinical drug study used as the basis for the publication must be a double blind, randomized, placebo or active control study.

"Pharmacist" - A person licensed in the practice of pharmacy by the state in which the prescription is filled.

"Pharmacy" - Every location licensed by the state board of pharmacy in the state where the practice of pharmacy is conducted.

"Pharmacy and therapeutic (P&T) committee" - The independent Washington state committee created by RCW 41.05.021 (1)(a)(iii) and 70.14.050. At the election of the medicaid agency or its designee, the committee may serve as the drug use review board provided for in WAC 182-530-4000.

"Point-of-sale (POS)" - A pharmacy claims processing system capable of receiving and adjudicating claims online.

"Practice of pharmacy" - The practice of and responsibility for:

(1) Accurately interpreting prescription orders;

(2) Compounding drugs;

(3) Dispensing, labeling, administering, and distributing of drugs and devices;

(4) Providing drug information to the client that includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices;

(5) Monitoring of drug therapy and use;

(6) Proper and safe storage of drugs and devices;

(7) Documenting and maintaining records;

(8) Initiating or modifying drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs; and

(9) Participating in drug use reviews and drug product selection.

"Practitioner" - An individual who has met the professional and legal requirements necessary to provide a health care service, such as a physician, nurse, dentist, physical therapist, pharmacist or other person authorized by state law as a practitioner.

"Preferred drug" - Drug(s) of choice within a selected therapeutic class that are selected based on clinical evidence of safety, efficacy, and effectiveness.

"Preferred drug list (PDL)" - The medicaid agency's list of drugs of choice within selected therapeutic drug classes.

"Prescriber" - A physician, osteopathic physician/surgeon, dentist, nurse, physician assistant, optometrist, pharmacist, or other person authorized by law or rule to prescribe drugs. See WAC 246-863-100 for pharmacists' prescriptive authority.

"Prescription" - An order for drugs or devices issued by a practitioner authorized by state law or rule to prescribe

drugs or devices, in the course of the practitioner's professional practice, for a legitimate medical purpose.

"Prescription drugs" - Drugs required by any applicable federal or state law or regulation to be dispensed by prescription only or that are restricted to use by practitioners only.

"Prospective drug use review (Pro-DUR)" - A process in which a request for a drug product for a particular client is screened, before the product is dispensed, for potential drug therapy problems.

"Reconstitution" - The process of returning a single active ingredient, previously altered for preservation and storage, to its approximate original state. Reconstitution is not compounding.

"Retrospective drug use review (Retro-DUR)" - The process in which drug utilization is reviewed on an ongoing periodic basis to identify patterns of fraud, abuse, gross overuse, or inappropriate or not medically necessary care.

"Risk/benefit ratio" - The result of assessing the side effects of a drug or drug regimen compared to the positive therapeutic outcome of therapy.

"Single source drug" - A drug produced or distributed under an original new drug application approved by the Food and Drug Administration (FDA).

"Substitute" - To replace a prescribed drug, with the prescriber's authorization, with:

- (1) An equivalent generic drug product of the identical base or salt as the specific drug product prescribed; or
- (2) A therapeutically equivalent drug other than the identical base or salt.

"Systematic review" - A specific and reproducible method to identify, select, and appraise all the studies that meet minimum quality standards and are relevant to a particular question. The results of the studies are then analyzed and summarized into evidence tables to be used to guide evidence-based decisions.

"Terminated NDC" - An eleven-digit national drug code (NDC) that is discontinued by the manufacturer for any reason. The NDC may be terminated immediately due to health or safety issues or it may be phased out based on the product's shelf life.

"Therapeutic alternative" - A drug product that contains a different chemical structure than the drug prescribed, but is in the same pharmacologic or therapeutic class and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to patients in a therapeutically equivalent dosage.

"Therapeutic class" - A group of drugs used for the treatment, remediation, or cure of a specific disorder or disease.

"Therapeutic interchange" - To dispense a therapeutic alternative to the prescribed drug when an endorsing practitioner who has indicated that substitution is permitted, prescribes the drug. See therapeutic interchange program (TIP).

"Therapeutic interchange program (TIP)" - The process developed by participating state agencies under RCW 69.41.190 and 70.14.050, to allow prescribers to endorse a Washington preferred drug list, and in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

"Therapeutically equivalent" - Drug products that contain different chemical structures but have the same efficacy and safety when administered to an individual, as determined by:

- (1) Information from the Food and Drug Administration (FDA);
- (2) Published and peer-reviewed scientific data;
- (3) Randomized controlled clinical trials; or
- (4) Other scientific evidence.

"Tiered dispensing fee system" - A system of paying pharmacies different dispensing fee rates, based on the individual pharmacy's total annual prescription volume and/or the drug delivery system used.

"True unit dose delivery" - A method in which each patient's medication is delivered to the nursing facility in quantities sufficient only for the day's required dosage.

"Unit dose drug delivery" - True unit dose or modified unit dose delivery systems.

"Usual and customary charge" - The fee that the provider typically charges the general public for the product or service.

"Washington preferred drug list (Washington PDL)" - The list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for purchase of drugs in state-operated health care programs.

"Wholesale acquisition cost" - The price paid by a wholesaler for drugs purchased from a manufacturer.

AMENDATORY SECTION (Amending WSR 12-18-062, filed 8/31/12, effective 10/1/12)

WAC 182-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies. (1) The medicaid agency does not cover:

- (a) A drug that is:
 - (i) Not approved by the Food and Drug Administration (FDA); or
 - (ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.
- (b) A drug prescribed:
 - (i) For weight loss or gain;
 - (ii) For infertility, frigidity, impotency;
 - (iii) For sexual or erectile dysfunction;
 - (iv) For cosmetic purposes or hair growth; or
 - (v) For treatment of cough or cold symptoms, except as listed in WAC 182-530-2000 (1)(i).
- (c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.
- (d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.
- (e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

- (f) A product:
 - (i) With an obsolete national drug code (NDC) for more than two years;
 - (ii) With a terminated NDC;
 - (iii) Whose shelf life has expired; or
 - (iv) Which does not have an eleven-digit NDC.
 - (g) Over-the-counter (OTC) drugs, vitamins, and minerals, except as allowed under WAC 182-530-2000 (1)(i).
 - (h) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).
 - (i) Free pharmaceutical samples.
 - (j) Over-the-counter or prescription drugs to promote smoking cessation unless the client is eighteen years old or older and participating in a medicaid agency-approved cessation program.
- ~~((k) A nonformulary drug except as allowed by WAC 182-530-2300(4).))~~
- (2) A noncovered drug can be requested(~~(=~~
~~(a) As described in WAC 182-530-2300 for a nonformulary drug; or~~
~~(b)) through the exception to rule process as described in WAC 182-501-0160 ((for all other noncovered drugs)).~~
- (3) If a noncovered drug is prescribed through the early and periodic screening, diagnosis, and treatment (EPSDT) process, an authorization request may be submitted indicating that the request is EPSDT related, and the request will be evaluated according to the process in WAC 182-501-0165. (See WAC 182-534-0100 for EPSDT rules).

AMENDATORY SECTION (Amending WSR 13-04-095, filed 2/6/13, effective 3/9/13)

WAC 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative. (1) The medicaid agency covers health care services, equipment, and supplies listed in this chapter, according to agency rules and subject to the limitations and requirements in this chapter, when they are:

- (a) Within the scope of an eligible client's medical assistance program. Refer to WAC 182-501-0060 and 182-501-0065; and
 - (b) Medically necessary as defined in WAC 182-500-0070.
- (2) The agency evaluates a request for a service that is in a covered category under the provisions of WAC 182-501-0065.
- (3) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 182-501-0169.
- (4) The agency covers the following physician-related services and health care professional services, subject to the conditions in subsections (1), (2), and (3) of this section:
- (a) Allergen immunotherapy services;
 - (b) Anesthesia services;
 - (c) Dialysis and end stage renal disease services (refer to chapter 182-540 WAC);
 - (d) Emergency physician services;
 - (e) ENT (ear, nose, and throat) related services;

- (f) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 182-534-0100);
 - (g) Reproductive health services (refer to chapter 182-532 WAC);
 - (h) Hospital inpatient services (refer to chapter 182-550 WAC);
 - (i) Maternity care, delivery, and newborn care services (refer to chapter 182-533 WAC);
 - (j) Office visits;
 - (k) Vision-related services (refer to chapter 182-544 WAC for vision hardware for clients twenty years of age and younger);
 - (l) Osteopathic treatment services;
 - (m) Pathology and laboratory services;
 - (n) Physiatry and other rehabilitation services (refer to chapter 182-550 WAC);
 - (o) Foot care and podiatry services (refer to WAC 182-531-1300);
 - (p) Primary care services;
 - (q) Psychiatric services, provided by a psychiatrist;
 - (r) Psychotherapy services for children as provided in WAC 182-531-1400;
 - (s) Pulmonary and respiratory services;
 - (t) Radiology services;
 - (u) Surgical services;
 - (v) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects from birth, illness, or physical trauma, or for mastectomy reconstruction for post cancer treatment;
 - (w) Oral health care services for emergency conditions for clients twenty-one years of age and older, except for clients of the division of developmental disabilities (refer to WAC 182-531-1025); and
 - (x) Other outpatient physician services.
- (5) The agency covers physical examinations for medical assistance clients only when the physical examination is one or more of the following:
- (a) A screening exam covered by the EPSDT program (see WAC 182-534-0100);
 - (b) An annual exam for clients of the division of developmental disabilities; or
 - (c) A screening pap smear, mammogram, or prostate exam.
- (6) By providing covered services to a client eligible for a medical assistance program, a provider who meets the requirements in WAC 182-502-0005(3) accepts the agency's rules and fees which includes federal and state law and regulations, billing instructions, and agency issuances.
- ~~((7) Outpatient drugs are not subject to the rules in this chapter. For rules about outpatient drugs see chapter 182-530 WAC.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-530-2200 How the medicaid agency develops and maintains the formulary.

WAC 182-530-2300 The medicaid agency's nonformulary justification process.

WSR 13-13-054
PROPOSED RULES
TRANSPORTATION COMMISSION

[Filed June 17, 2013, 3:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-09-043.

Title of Rule and Other Identifying Information: State ferries and toll bridges, WAC 468-300-010, 468-300-020, 468-300-040, 468-300-080, and 468-300-220.

As required by law, the transportation commission is reviewing the need to adjust ferry fares in October 2013 and May 2014. Proposed revisions to WAC 468-300-010, 468-300-020, 468-300-040 and 468-300-220 increase passenger tolls, vehicle tolls and ferry charter rates effective October 1, 2013; and a second increase effective May 1, 2014, except for vessel charter rates. Proposed revisions to WAC 468-300-080 modify the ferry fuel surcharge methodology, including the timing and sequence of data analysis for a fuel surcharge if the actual vessel fuel costs exceed the budgeted amount established by the legislature.

Hearing Location(s): Union Station, Ruth Fisher Boardroom, 401 South Jackson Street, Seattle, WA 98104, on Tuesday, July 30, 2013, at 3:00 p.m. - 5:00 p.m.

Date of Intended Adoption: Tuesday, July 30, 2013.

Submit Written Comments to: Reema Griffith, Executive Director, Transportation Commission, 2404 Chandler Court S.W., Suite 270, Olympia, WA 98501, e-mail griffir@wstc.wa.gov, fax (360) 705-6802, by July 29, 2013.

Assistance for Persons with Disabilities: Contact transportation commission office by July 29, 2013, TTY 711 connect to (360) 705-7070.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to: (i) Increase ferry tolls and ferry charter rates; (ii) modify certain fare categories; and (iii) update the ferry fuel surcharge methodology, all within the specified WACs. The revisions follow the annual review of Washington state ferries' (WSF) fares and policies.

The anticipated effects of this proposal are that: (i) General ferry fares will increase and some fare categories will be modified; and (ii) the timing and sequence of data analysis for a fuel surcharge will be modified.

Reasons Supporting Proposal: The fare changes are aimed at meeting requirements in state law that include fares be set to meet the fare revenue target established in the two-year transportation budget.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.315.

Statute Being Implemented: RCW 47.56.030 and 47.60.315.

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

Name of Proponent: Washington state department of transportation, ferries division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Raymond G. Deardorf, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, (206) 515-3491.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Pursuant to RCW 19.85.030, the proposed rules will not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. WSF is anticipated to take in more farebox revenue from the proposed fare increase which is estimated to generate approximately \$7.6 million for FY 2014 and FY 2015 combined.

June 17, 2013
 Reema Griffith
 Executive Director

AMENDATORY SECTION (Amending WSR 11-18-034, filed 8/30/11, effective 10/1/11 and 5/1/12)

WAC 468-300-010 Ferry passenger tolls.

EFFECTIVE 03:00 A.M. October 1, (~~2014~~) 2013

ROUTES	Full Fare ¹⁰	Senior/ Disabled ¹⁰	Youth Fare 18 and under ¹⁰	Multiride Media 20 Rides ^{1, 10}	Monthly Pass ^{5, 10}	Bicycle Surcharge ²
Via Auto Ferry						
*Fautleroy-Southworth	((5.60)) <u>5.80</u>	((2.65)) <u>2.75</u>	((4.50)) <u>2.90</u>	((44.80)) <u>46.40</u>	((71.70)) <u>74.25</u>	1.00
*Seattle-Bremerton						
*Seattle-Bainbridge Island						
*Edmonds-Kingston	((7.25)) <u>7.60</u>	((3.50)) <u>3.65</u>	((5.80)) <u>3.80</u>	((58.00)) <u>60.80</u>	((92.80)) <u>97.30</u>	1.00
Port Townsend-Coupeville	((2.80)) <u>2.90</u>	((1.25)) <u>1.30</u>	((2.25)) <u>1.45</u>	((44.80)) <u>46.40</u>	((71.70)) <u>74.25</u>	0.50
*Fautleroy-Vashon						
*Southworth-Vashon						
*Pt. Defiance-Tahlequah	((4.65)) <u>4.85</u>	((2.20)) <u>2.30</u>	((3.70)) <u>2.45</u>	((37.20)) <u>38.80</u>	((59.55)) <u>62.10</u>	1.00
*Mukilteo-Clinton	((4.25)) <u>4.50</u>	((2.00)) <u>2.10</u>	((3.40)) <u>2.25</u>	((34.00)) <u>36.00</u>	((54.40)) <u>57.60</u>	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor	((11.80)) <u>12.45</u>	((5.75)) <u>6.10</u>	((9.45)) <u>6.25</u>	((76.70)) <u>80.95</u>	N/A	2.00 ⁶

ROUTES	Full Fare ¹⁰	Senior/ Disabled ¹⁰	Youth Fare 18 and under ¹⁰	Multiride Media 20 Rides ^{1, 10}	Monthly Pass ^{5, 10}	Bicycle Surcharge ²
Between Lopez, Shaw, Orcas and Friday Harbor ⁴	N/C	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	((17.25)) 18.45	((8.50)) 9.10	((13.80)) 9.20	N/A	N/A	4.00 ⁷
From Lopez, Shaw, Orcas and Friday Harbor to Sidney	((6.45)) 6.65	((3.10)) 3.20	((5.15)) 3.35	N/A	N/A	1.00 ⁸
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ³	((23.70)) 25.10	((11.60)) 12.30	((18.95)) 12.55	N/A	N/A	5.00 ⁹

All fares rounded to the next multiple of \$0.05.

* These routes operate as a one-point toll collection system.

¹MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery times.

²BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare. Customers using multiride media and monthly passes are exempt from the bicycle surcharge. On all routes except Anacortes/San Juan Island/Sidney, B.C., customers paying with the ePurse or the ORCA card are exempt from the bicycle surcharge.

³ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

⁴INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

⁵PASSES - Passenger passes are available for all routes except Anacortes/San Juan Island/Sidney. Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass.

A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount.

The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user. Monthly passes purchased through the regional SmartCard program are also nontransferable and intended for a single user, but allow for unlimited usage.

⁶BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 through September 30).

⁷BICYCLE SURCHARGE - This becomes \$6.00 during peak season.

⁸BICYCLE SURCHARGE - This becomes \$2.00 during peak season.

⁹BICYCLE SURCHARGE - This becomes \$8.00 during peak season.

¹⁰CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single passenger fare collected. On all multiride cards except for Port Townsend/Coupeville, there will be an additional capital surcharge of \$2.50. For Port Townsend/Coupeville, the additional capital surcharge will be \$5.00 on multiride cards. On all monthly passes except Port Townsend/Coupeville, there will be an additional \$4.00 capital surcharge. For Port Townsend/Coupeville, the additional capital surcharge will be \$8.00 on monthly passes.

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare,

which will be ~~((80%))~~ 50% of full fare rounded to the next multiple of \$0.05.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

MEDICARE CARD HOLDERS - Any person holding a medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary.

tary, Executive Director for a specific discount not to exceed fifty percent of full fare.

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors and staff. All school groups require a letter of authorization and prior notification. Notification shall be made no less than 72 hours before the scheduled departure and will include the expected number of school-age children that will be traveling to ensure WSF can satisfy U.S. Coast Guard lifesaving equipment requirements. Failure to provide adequate notification may result in delayed travel. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiride media as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such

services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

EFFECTIVE 03:00 A.M. May 1, (~~2012~~) 2014

ROUTES	Full Fare ⁽⁽⁺⁰⁾⁾ §	Senior/ Disabled ⁽⁽⁺⁰⁾⁾ §	Youth Fare 18 and under ⁽⁽⁺⁰⁾⁾ §	Multiride Media 20 Rides ^{1,((+0))} §	Monthly Pass ^{5,} ⁽⁽⁺⁰⁾⁾ §	Bicycle Surcharge ²
Via Auto Ferry						
*Fautleroy-Southworth	((5.70)) 6.00	((2.70)) 2.85	((4.55)) 3.00	((45.60)) 48.00	((73.00)) 76.80	1.00
*Seattle-Bremerton						
*Seattle-Bainbridge Island						
*Edmonds-Kingston	((7.45)) 7.75	((3.60)) 3.75	((5.95)) 3.90	((59.60)) 62.00	((95.40)) 99.20	1.00
Port Townsend-Coupeville	((2.85)) 3.00	((1.30)) 1.35	((2.30)) 1.50	((45.60)) 48.00	((73.00)) 76.80	0.50
*Fautleroy-Vashon						
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*Pt. Defiance-Tahlequah	((4.75)) 4.95	((2.25)) 2.35	((3.80)) 2.50	((38.00)) 39.60	((60.80)) 63.40	1.00
*Mukilteo-Clinton	((4.40)) 4.55	((2.05)) 2.15	((3.50)) 2.25	((35.20)) 36.40	((56.35)) 58.25	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor	((12.20)) 12.70	((5.95)) 6.20	((9.75)) 6.35	((79.30)) 82.55	N/A	2.00 ⁶
Between Lopez, Shaw, Orcas and Friday Harbor ⁴	N/C	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	((17.75)) 18.80	((8.75)) 9.25	((14.20)) 9.40	N/A	N/A	4.00 ⁷
((From Lopez, Shaw, Orcas and Friday Harbor to Sidney	6.65	3.20	5.30	N/A	N/A	1.00⁸)
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ³	((24.40)) 23.30	((11.95)) 11.50	((19.50)) 11.65	N/A	N/A	((5.00⁹)) 4.00 ²

All fares rounded to the next multiple of \$0.05.
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provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel.

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SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

AMENDATORY SECTION (Amending WSR 11-18-034, filed 8/30/11, effective 10/1/11 and 5/1/12)

WAC 468-300-020 Vehicle under 22', motorcycle, and stowage ferry tolls.

EFFECTIVE 03:00 A.M. October 1, (~~2011~~) 2013

ROUTES	Vehicle Under 14' Incl. Driver One Way ⁷	Vehicle Under 14' w/Sr Citizen or Disabled Driver ^{4, 7}	Vehicle Under 14' Over Height Charge ¹	Vehicle under 14' Multiride Media 20 Rides ^{2, 7}
Fauntleroy-Southworth Port Townsend/Coupeville	((8.65)) <u>8.05</u>	((7.15)) <u>6.50</u>	((8.65)) <u>8.05</u>	((138.25)) <u>128.80</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((11.25)) <u>10.45</u>	((9.35)) <u>8.45</u>	((11.25)) <u>10.45</u>	((180.00)) <u>167.20</u>
*Fauntleroy-Vashon				
*Southworth-Vashon				
*Pt. Defiance-Tahlequah	((14.40)) <u>13.35</u>	((11.95)) <u>10.80</u>	((14.40)) <u>13.35</u>	((115.20)) <u>106.80</u>
Mukilteo-Clinton	((6.60)) <u>6.15</u>	((5.45)) <u>4.95</u>	((6.60)) <u>6.15</u>	((105.85)) <u>98.40</u>
10 Rides - 5 Round Trips				
*Anacortes to Lopez	((25.90)) <u>24.45</u>	((19.85)) <u>18.10</u>	((25.90)) <u>24.45</u>	((97.00)) <u>91.70</u>
*Shaw, Orcas	((31.05)) <u>29.40</u>	((25.00)) <u>23.05</u>	((31.05)) <u>29.40</u>	((116.45)) <u>110.25</u>
*Friday Harbor	((36.90)) <u>34.90</u>	((30.85)) <u>28.55</u>	((36.90)) <u>34.90</u>	((138.40)) <u>130.90</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((17.30)) <u>14.35</u>	((17.30)) <u>14.35</u>	((17.30)) <u>14.35</u>	((69.30)) <u>57.40</u>
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations	((41.65)) <u>40.25</u>	((32.90)) <u>30.90</u>	((41.65)) <u>40.25</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((12.45)) <u>11.95</u>	((9.10)) <u>8.50</u>	((12.45)) <u>11.95</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((54.10)) <u>52.25</u>	((42.00)) <u>39.45</u>	((54.10)) <u>52.25</u>	N/A

ROUTES	Vehicle 14' to Under 22' Incl. Driver One Way ⁷	Vehicle 14' to Under 22' w/Sr Citizen or Disabled Driver ^{4, 7}	Vehicle 14' to Under 22' Over Height Charge ¹	Vehicle 14' to Under 22' Multiride Media 20 Rides ^{2, 7}
Fauntleroy-Southworth Port Townsend/Coupeville	((9.60)) <u>10.25</u>	((8.10)) <u>8.70</u>	((9.60)) <u>10.25</u>	((153.60)) <u>164.00</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((12.50)) <u>13.30</u>	((10.60)) <u>11.30</u>	((12.50)) <u>13.30</u>	((200.00)) <u>212.80</u>
*Fauntleroy-Vashon				
*Southworth-Vashon				
*Pt. Defiance-Tahlequah	((16.00)) <u>17.00</u>	((13.55)) <u>14.45</u>	((16.00)) <u>17.00</u>	((128.00)) <u>136.00</u>
Mukilteo-Clinton	((7.35)) <u>7.85</u>	((6.20)) <u>6.65</u>	((7.35)) <u>7.85</u>	((117.60)) <u>125.60</u>
10 Rides - 5 Round Trips				
*Anacortes to Lopez	((28.75)) <u>30.60</u>	((22.70)) <u>24.25</u>	((28.75)) <u>30.60</u>	((107.85)) <u>114.75</u>
*Shaw, Orcas	((34.50)) <u>36.70</u>	((28.45)) <u>30.35</u>	((34.50)) <u>36.70</u>	((129.40)) <u>137.65</u>
*Friday Harbor	((41.00)) <u>43.60</u>	((34.95)) <u>37.25</u>	((41.00)) <u>43.60</u>	((153.75)) <u>163.50</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((19.25)) <u>20.50</u>	((19.25)) <u>20.50</u>	((19.25)) <u>20.50</u>	((77.00)) <u>82.00</u>
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations	((46.25)) <u>49.60</u>	((37.50)) <u>40.25</u>	((46.25)) <u>49.60</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((13.85)) <u>14.25</u>	((10.50)) <u>10.80</u>	((13.85)) <u>14.25</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((60.10)) <u>63.85</u>	((48.00)) <u>51.05</u>	((60.10)) <u>63.85</u>	N/A

EFFECTIVE 03:00 A.M. October 1, (~~2014~~) 2013

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ^{1,7} One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage ^{1,7} One Way	(Motorcycle Oversize Charge ³)	Motorcycle Frequent User Commuter 20 Rides ^{2,7}
Fauntleroy-Southworth Port Townsend/Coupeville	((4.20)) 4.40	((2.70)) 2.85	((1.80))	((67.20)) 70.40
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((5.40)) 5.70	((3.50)) 3.70	((2.30))	((86.40)) 91.20
*Fauntleroy-Vashon				
*Southworth-Vashon				
*Pt. Defiance-Tahlequah	((6.95)) 7.30	((4.50)) 4.75	((2.95))	((55.60)) 58.40
Mukilteo-Clinton	((3.20)) 3.40	((2.05)) 2.20	((1.40))	((51.20)) 54.40
*Anacortes to Lopez	((15.20)) 16.10	((9.15)) 9.75	((4.55))	((114.00)) 120.75
*Shaw, Orcas	((16.35)) 17.30	((10.30)) 10.95	((5.95))	((122.65)) 129.75
*Friday Harbor	((17.65)) 18.70	((11.60)) 12.35	((7.50))	((132.40)) 140.25
Between Lopez, Shaw, Orcas and Friday Harbor ³	((5.45)) 5.75	((5.45)) 5.75	((6.25))	N/A
Anacortes to Sidney and Sidney to all destinations	((23.05)) 24.70	((14.30)) 15.35	((7.65))	N/A
(Travelers with advanced reservations (\$15 fee)- Anacortes to Sidney and Sidney to all destinations ⁶	N/A	N/A	N/A	N/A))
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((7.95)) 8.20	((4.60)) 4.75	((2.05))	N/A
(Travelers with advanced reservations (\$7 fee)- from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁶	N/A	N/A	N/A	N/A))
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((31.00)) 32.90	((18.90)) 20.10	((9.70))	N/A

All fares rounded to the next multiple of \$0.05.

* These routes operate as a one-point toll collection system.

¹SIZE - Vehicles up to 14' in length and under 7'6" in height shall pay the vehicle under 14' toll. All vehicles from 14' to under 22' in length and under 7'6" in height shall pay the 14' to 22' toll. All vehicles up to 22' but over 7'6" in height shall pay an overweight charge of 100% of the vehicle full fare. Motorcycles (~~with trailers, sidecars, or any~~) towing a trailer and vehicles licensed as (a) motorcycles with three or more wheels (will pay an oversize motorcycle charge) that are 8'0" or longer shall pay the appropriate length-based vehicle fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

²MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund. For mail order deliveries, WSF may add additional days to allow for delivery time. The vehicle/driver multiride card may be used for passage for an attendant driver plus one disabled driver.

³INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

⁴SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while travel-

ing on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

⁵ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

⁶VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advance vehicle reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the equivalent one-way fare and will be charged if the customer does not travel within the same business day as their reserved sailing. Refunds may be available under certain circumstances.

⁷CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single vehicle/driver fare collected. On all multiride cards except for routes serving Vashon Island and the San Juan Islands, there will be an additional capital surcharge of \$5.00. For Vashon Island routes, the additional capital surcharge will be \$2.50 on multiride cards. For motorcycles in the San Juan Islands, the capital surcharge on multiride cards will be \$2.50. For vehicles under 22' in the San Juan Islands, the capital surcharge on multiride cards will be \$1.25.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit

valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from May 1 through September 30 except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media. ~~((A 14% surcharge shall be applied to the San Juan Islands to Sidney route.))~~ The resulting fare is rounded ~~((up to the next))~~ to the nearest \$0.05 if required.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at

no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time.

EFFECTIVE 03:00 A.M. May 1, ~~((2012))~~ 2014

ROUTES	Vehicle Under 14' Incl. Driver One Way ⁷	Vehicle Under 14' w/Sr Citizen or Disabled Driver ^{4,7}	Vehicle Under 14' Over Height Charge ^{1,7}	Vehicle Under 14' Multiride Media 20 Rides ^{2,7}
Fauntleroy-Southworth Port Townsend/Coupeville	((7.95)) <u>8.25</u>	((6.45)) <u>6.65</u>	((7.95)) <u>8.25</u>	((127.35)) <u>132.00</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((40.30)) <u>10.70</u>	((8.35)) <u>8.70</u>	((40.30)) <u>10.70</u>	((165.10)) <u>171.20</u>
*Fauntleroy-Vashon				
*Southworth-Vashon				
*Pt. Defiance-Tahlequah	((13.20)) <u>13.70</u>	((10.70)) <u>11.10</u>	((13.20)) <u>13.70</u>	((105.60)) <u>109.60</u>
Mukilteo-Clinton	((6.10)) <u>6.30</u>	((4.90)) <u>5.10</u>	((6.10)) <u>6.30</u>	((97.30)) <u>100.80</u>
10 Rides - 5 Round Trips				
*Anacortes to Lopez	((23.70)) <u>25.05</u>	((17.45)) <u>18.55</u>	((23.70)) <u>25.05</u>	((88.95)) <u>93.95</u>
*Shaw, Orcas	((28.50)) <u>30.15</u>	((22.25)) <u>23.65</u>	((28.50)) <u>30.15</u>	((106.80)) <u>113.05</u>
*Friday Harbor	((33.85)) <u>35.80</u>	((27.60)) <u>29.30</u>	((33.85)) <u>35.80</u>	((126.90)) <u>134.25</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((15.90)) <u>14.70</u>	((15.90)) <u>14.70</u>	((15.90)) <u>14.70</u>	((63.50)) <u>58.80</u>

ROUTES	Vehicle Under 14' Incl. Driver One Way ⁷	Vehicle Under 14' w/Sr Citizen or Disabled Driver ^{4, 7}	Vehicle Under 14' Over Height Charge ^{1, 7}	Vehicle Under 14' Multiride Media 20 Rides ^{2, 7}
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations	((38-10)) <u>41.25</u>	((29-10)) <u>31.70</u>	((38-10)) <u>41.25</u>	N/A
((Lopez, Shaw, Orcas and Friday Harbor to Sidney	11.40	7.95	11.40	N/A))
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((49-50)) <u>51.05</u>	((37-05)) <u>39.25</u>	((49-50)) <u>51.05</u>	N/A

EFFECTIVE 03:00 A.M. May 1, ((2012)) 2014

ROUTES	Vehicle 14' to Under 22' Incl. Driver One Way ⁷	Vehicle 14' to Under 22' w/Sr Citizen or Disabled Driver ^{4, 7}	Vehicle 14' to Under 22' Over Height Charge ^{1, 7}	Vehicle 14' to Under 22' Multiride Media 20 Rides ^{2, 7}
Fauntleroy-Southworth Port Townsend/Coupeville ⁶	((9-95)) <u>10.50</u>	((8-45)) <u>8.90</u>	((9-95)) <u>10.50</u>	((159-20)) <u>168.00</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((42-90)) <u>13.65</u>	((40-95)) <u>11.65</u>	((42-90)) <u>13.65</u>	((206-40)) <u>218.40</u>
*Fauntleroy-Vashon				
*Southworth-Vashon				
*Pt. Defiance-Tahlequah	((16-50)) <u>17.45</u>	((14-00)) <u>14.85</u>	((16-50)) <u>17.45</u>	((132-00)) <u>139.60</u>
Mukilteo-Clinton	((7-60)) <u>8.05</u>	((6-40)) <u>6.85</u>	((7-60)) <u>8.05</u>	((121-60)) <u>128.80</u>
10 Rides - 5 Round Trips				
*Anacortes to Lopez ⁶	((29-65)) <u>31.40</u>	((23-40)) <u>24.90</u>	((29-65)) <u>31.40</u>	((411-20)) <u>117.75</u>
*Shaw, Orcas ⁶	((35-60)) <u>37.65</u>	((29-35)) <u>31.15</u>	((35-60)) <u>37.65</u>	((433-50)) <u>141.20</u>
*Friday Harbor ⁶	((42-30)) <u>44.75</u>	((36-05)) <u>38.25</u>	((42-30)) <u>44.75</u>	((458-65)) <u>167.80</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((49-85)) <u>21.00</u>	((49-85)) <u>21.00</u>	((49-85)) <u>21.00</u>	((79-40)) <u>84.00</u>
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations ⁶	((47-65)) <u>50.85</u>	((38-65)) <u>41.30</u>	((47-65)) <u>50.85</u>	N/A
((Lopez, Shaw, Orcas and Friday Harbor to Sidney	14.25	10.80	14.25	N/A))
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ^{(5)) 6}	((61-90)) <u>62.95</u>	((49-45)) <u>51.15</u>	((61-90)) <u>62.95</u>	N/A

EFFECTIVE 03:00 A.M. May 1, ((2012)) 2014

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ^{1, 7} One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage ^{1, 7} One Way	((Motorcycle Oversize Charge ¹))	Motorcycle Frequent User Commuter 20 Rides ^{2, 7}
Fauntleroy-Southworth Port Townsend/Coupeville ⁶	((4-30)) <u>4.50</u>	((2-80)) <u>2.90</u>	((2-20))	((68-80)) <u>72.00</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((5-60)) <u>5.90</u>	((3-65)) <u>3.90</u>	((2-90))	((89-60)) <u>94.40</u>
*Fauntleroy-Vashon				
*Southworth-Vashon				
*Pt. Defiance-Tahlequah	((7-10)) <u>7.45</u>	((4-60)) <u>4.85</u>	((3-65))	((56-80)) <u>59.60</u>
Mukilteo-Clinton	((3-30)) <u>3.50</u>	((2-10)) <u>2.30</u>	((1-70))	((52-80)) <u>56.00</u>
*Anacortes to Lopez ⁶	((15-70)) <u>16.45</u>	((9-45)) <u>9.95</u>	((5-80))	((117-75)) <u>123.40</u>
*Shaw, Orcas ⁶	((46-90)) <u>17.70</u>	((40-65)) <u>11.20</u>	((7-45))	((126-75)) <u>132.75</u>
*Friday Harbor ⁶	((48-25)) <u>19.15</u>	((42-00)) <u>12.65</u>	((9-35))	((136-90)) <u>143.65</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((5-65)) <u>5.95</u>	((5-65)) <u>5.95</u>	((7-20))	N/A
Anacortes to Sidney and Sidney to all destinations ⁶	((23-75)) <u>25.25</u>	((14-75)) <u>15.70</u>	((9-70))	N/A

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ^{1,7} One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage ^{1,7} One Way	(Motorcycle Oversize Charge ³)	Motorcycle Frequent User Commuter 20 Rides ^{2,7}
((Travelers with advanced reservations (\$15 fee)- Anacortes to Sidney and Sidney to all destina- tions ⁶	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	8.20	4.75	2.65	N/A
Travelers with advanced reservations (\$7 fee)- from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁶	N/A	N/A	N/A	N/A))
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ^{(5) 6}	((31.95)) 31.25	((19.50)) 19.45	((12.35))	N/A

All fares rounded to the next multiple of \$0.05.

* These routes operate as a one-point toll collection system.

¹SIZE - Vehicles up to 14' in length and under 7'6" in height shall pay the vehicle under 14' toll. Vehicles from 14' to under 22' and under 7'6" in height shall pay the 14' to 22' toll. All vehicles up to 22' but over 7'6" in height shall pay an overheight charge of 100% of the vehicle full fare. Motorcycles ((with trailers, sidecars, or any)) towing a trailer and vehicles licensed as ((a)) motorcycles with three or more wheels ((will pay an oversize motorcycle charge)) that are 8'0" or longer shall pay the appropriate length-based vehicle fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

²MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund. For mail order deliveries, WSF may add additional days to allow for delivery time. The vehicle/driver multiride card may be used for passage for an attendant driver plus one disabled passenger.

³INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

⁴SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

⁵ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

⁶VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advance vehicle reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the equivalent one-way fare and will be charged if the customer does not travel within the same business day as their reserved sailing. Refunds may be available under certain circumstances.

⁷CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single vehicle/driver fare collected. On all multiride cards except for routes serving Vashon Island and the San Juan Islands, there will be an additional capital surcharge of \$5.00. For Vashon Island routes, the additional capital surcharge will be \$2.50 on multiride cards. For motorcycles in the San Juan Islands, the capital surcharge on multiride cards will be \$2.50. For vehicles under 22' in the San Juan Islands, the capital surcharge on multiride cards will be \$1.25.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from May 1 through September 30 except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media. ~~((A 144% surcharge shall be applied to the San Juan Islands to Sidney route.))~~ The resulting fare is rounded up to the next \$0.05 if required.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage

authorization a permanent component of the WSF ferry toll schedule.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of multiparty promotional program.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time.

AMENDATORY SECTION (Amending WSR 12-10-032, filed 4/25/12, effective 6/1/12)

WAC 468-300-040 Oversize vehicle ferry tolls.

EFFECTIVE 03:00 A.M. October 1, (~~2014~~) 2013

ROUTES	Oversize Vehicle Ferry Tolls ¹							
	Overall Unit Length - Including Driver							
	22' To Under 30' Under 7'6" High ⁵	22' To Under 30' Over 7'6" High ⁵	30' To Under 40' ⁵	40' To Under 50' ⁵	50' To Under 60' ⁵	60' To under 70' ⁵	70' To and include 80' ⁵	Cost Per Ft. Over 80' @
Fauntleroy-Southworth	((44.65))	((29.30))	((39.35))	((49.45))	((59.50))	((69.60))	((79.70))	((1.00))
Port Townsend/Coupeville	15.90	31.80	42.55	53.30	64.05	74.85	85.60	1.10
Seattle-Bainbridge Island								
Seattle/Bremerton	((19.05))	((38.15))	((51.25))	((64.40))	((77.50))	((90.65))	((103.75))	((1.30))
Edmonds-Kingston	20.65	41.25	55.20	69.15	83.15	97.10	111.05	1.40
*Fauntleroy-Vashon								
*Southworth-Vashon	((24.40))	((48.80))	((65.60))	((82.40))	((99.20))	((116.00))	((132.80))	((1.70))
*Pt. Defiance-Tahlequah	26.35	52.70	70.55	88.40	106.25	124.10	141.95	1.80
	((11.20))	((22.40))	((30.15))	((37.85))	((45.55))	((53.30))	((61.00))	((0.75))
Mukilteo-Clinton	12.20	24.35	32.60	40.80	49.05	57.30	65.55	0.80
	((43.85))	((87.70))	((117.85))	((148.05))	((178.25))	((208.45))	((238.65))	((3.00))
*Anacortes to Lopez ²	47.45	94.85	127.00	159.10	191.25	223.40	255.50	3.20
	((52.60))	((105.20))	((141.45))	((177.70))	((213.90))	((250.15))	((286.35))	((3.60))
*Anacortes to Shaw, Orcas ²	56.90	113.75	152.30	190.85	229.40	267.90	306.45	3.85
	((62.55))	((125.05))	((168.10))	((211.15))	((254.20))	((297.25))	((340.30))	((4.30))
*Anacortes to Friday Harbor	67.60	135.15	180.95	226.70	272.50	318.30	364.05	4.60
Between Lopez, Shaw, Orcas and Friday Harbor ³	((29.35))	((58.70))	((78.90))	((99.15))	((119.35))	((139.55))	((159.80))	
	31.80	63.55	85.10	106.60	128.15	149.65	171.15	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations((--Recreational Vehicles and Buses))	((70.55))	((70.55))	((94.80))	((119.10))	((143.40))	((167.65))	((191.95))	((2.45))
	77.65	77.65	103.95	130.25	156.55	182.85	209.15	2.65
((Anacortes to Sidney and Sidney to all destinations-- Commercial Vehicles	70.55	141.05	189.60	238.20	286.75	335.30	383.90	4.85))
Lopez, Shaw, Orcas and Friday Harbor to Sidney((--Recreational Vehicles and Buses	((21.15))	((21.15))	((28.40))	((35.70))	((42.95))	((50.20))	((57.50))	
--Commercial Vehicles	22.30	22.30	29.85	37.40	45.00	52.55	60.10	0.75
	21.15	42.25	56.80	71.35	85.85	100.40	114.95	1.45))

Oversize Vehicle Ferry Tolls¹

Overall Unit Length - Including Driver

ROUTES	22' To	22' To	30' To	40' To Under	50' To	60' To under	70' To and	Cost Per
	Under 30'	Under 30'						
	Under 7'6"	Over 7'6"	Under 40' ⁵	50' ⁵	Under 60' ⁵	70' ⁵	include 80' ⁵	Ft. Over
	High ⁵	High ⁵						80' @
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴ (--Recreational Vehicles and Buses	((91.70))	((91.70))	((123.20))	((154.80))	((186.35))	((217.85))	((249.45))	((3.20))
Commercial Vehicles	<u>99.95</u>	<u>99.95</u>	<u>133.80</u>	<u>167.65</u>	<u>201.55</u>	<u>235.40</u>	<u>269.25</u>	<u>3.40</u>
	<u>91.70</u>	<u>183.30</u>	<u>246.40</u>	<u>309.55</u>	<u>372.60</u>	<u>435.70</u>	<u>498.85</u>	<u>6.30</u>

¹OVERSIZE VEHICLES - Includes all vehicles 22 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 22' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 22-30 feet in length and over 7'6" in height shall be charged the 22-30 foot length and under 7'6" in height fare for vehicles equipped with wheelchair lift or other mechanism designed to accommodate the person with the disability.

²TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: \$61.00 base season, \$82.25 peak season.

³INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

⁴ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

⁵CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single vehicle/driver fare collected.

BULK NEWSPAPERS - Per 100 lbs. \$2.85 (Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.42 per 100 lbs.). Daily newspapers, in bundles, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advanced reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the equivalent one-way fare and will be charged if the customer does not travel within the same business day as their reserved sailing. Refunds may be available under certain special circumstances.

PEAK SEASON SURCHARGE - A peak season surcharge shall apply to all oversize vehicles from May 1 through September 30. The oversize fare shall be determined based on the peak-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversize vehicle. The resulting fare is rounded up to the next \$0.05 if required.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate. The senior citizen discount shall apply to the driver of an oversize vehicle.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

DISCOUNT FROM REGULAR TOLL - Effective June 1, 2005, through fall of 2005, oversize vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. With the implementation of EFS in spring 2006, WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

EFFECTIVE 03:00 A.M. May 1, ~~(2012)~~ 2014

Oversize Vehicle Ferry Tolls ¹								
Overall Unit Length - Including Driver								
ROUTES	22' To Under 30' Under 7'6" High ⁵	22' To Under 30' Over 7'6" High ⁵	30' To Under 40' ⁵	40' To Under 50' ⁵	50' To Under 60' ⁵	60' To under 70' ⁵	70' To and include 80' ⁵	Cost Per Ft. Over 80' @
Fauntleroy-Southworth Port Townsend/Coupeville	((15.45)) <u>16.30</u>	((30.85)) <u>32.55</u>	((41.30)) <u>43.60</u>	((51.75)) <u>54.60</u>	((62.20)) <u>65.65</u>	((72.65)) <u>76.65</u>	((83.10)) <u>87.65</u>	((1.05)) <u>1.10</u>
Seattle-Bainbridge Island Seattle/Bremerton Edmonds-Kingston	((20.00)) <u>21.15</u>	((40.00)) <u>42.30</u>	((53.55)) <u>56.65</u>	((67.10)) <u>71.00</u>	((80.65)) <u>85.30</u>	((94.15)) <u>99.65</u>	((107.70)) <u>114.00</u>	((1.35)) <u>1.45</u>
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((25.60)) <u>27.05</u>	((51.15)) <u>54.10</u>	((68.50)) <u>72.40</u>	((85.80)) <u>90.75</u>	((103.15)) <u>109.05</u>	((120.45)) <u>127.40</u>	((137.80)) <u>145.70</u>	((1.75)) <u>1.85</u>
Mukilteo-Clinton	((41.80)) <u>12.50</u>	((23.55)) <u>24.95</u>	((31.55)) <u>33.40</u>	((39.50)) <u>41.85</u>	((47.50)) <u>50.30</u>	((55.50)) <u>58.75</u>	((63.45)) <u>67.20</u>	((0.80)) <u>0.85</u>
*Anacortes to Lopez ²	((45.95)) <u>48.70</u>	((91.90)) <u>97.35</u>	((123.05)) <u>130.30</u>	((154.20)) <u>163.30</u>	((185.30)) <u>196.25</u>	((216.45)) <u>229.20</u>	((247.60)) <u>262.20</u>	((3.10)) <u>3.30</u>
*Anacortes to Shaw, Orcas ²	((55.20)) <u>58.35</u>	((110.35)) <u>116.70</u>	((147.75)) <u>156.25</u>	((185.10)) <u>195.80</u>	((222.50)) <u>235.30</u>	((259.90)) <u>274.85</u>	((297.25)) <u>314.40</u>	((3.75)) <u>3.95</u>
*Anacortes to Friday Harbor	((65.60)) <u>69.35</u>	((131.15)) <u>138.70</u>	((175.55)) <u>185.70</u>	((219.95)) <u>232.70</u>	((264.40)) <u>279.70</u>	((308.80)) <u>326.70</u>	((353.20)) <u>373.65</u>	((4.45)) <u>4.70</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((30.80)) <u>32.55</u>	((61.55)) <u>65.10</u>	((82.40)) <u>87.15</u>	((103.20)) <u>109.20</u>	((124.05)) <u>131.25</u>	((144.90)) <u>153.30</u>	((165.75)) <u>175.35</u>	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations(—Recreational Vehicles and Buses))	((73.85)) <u>79.60</u>	((73.85)) <u>79.60</u>	((98.90)) <u>106.55</u>	((123.90)) <u>133.55</u>	((148.90)) <u>160.50</u>	((173.95)) <u>187.45</u>	((198.95)) <u>214.40</u>	((2.50)) <u>2.70</u>
((Anacortes to Sidney and Sidney to all destinations—Commercial Vehicles	73.85	147.70	197.75	247.80	297.80	347.85	397.90	5.00
Lopez, Shaw, Orcas and Friday Harbor to Sidney—Recreational Vehicles and Buses	22.10	22.10	29.60	37.05	44.55	52.00	59.50	0.75
—Commercial Vehicles	22.10	44.20	59.15	74.10	89.05	104.00	119.00	1.50))
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴ (—Recreational Vehicles and Buses	((95.95)) <u>98.55</u>	((95.95)) <u>98.55</u>	((128.50)) <u>131.95</u>	((160.95)) <u>165.30</u>	((193.45)) <u>198.70</u>	((225.95)) <u>232.05</u>	((258.45)) <u>265.45</u>	((3.25)) <u>3.35</u>
—Commercial Vehicles	95.95	191.90	256.90	321.90	386.85	451.85	516.90	6.50))

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³INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one

transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

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efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the equivalent one-way fare and will be charged if the customer does not travel within the same business day as their reserved sailing. Refunds may be available under certain special circumstances.

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EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

AMENDATORY SECTION (Amending WSR 11-18-034, filed 8/30/11, effective 10/1/11 and 5/1/12)

WAC 468-300-080 Fuel surcharge. (1) In order to manage the financial risk associated with fuel price volatility, it is hereby declared to be the policy of the Washington state transportation commission to implement a fuel surcharge as an added component to the regular posted fares for passage on vessels operated by Washington state ferries (WSF) to mitigate the financial impacts associated with unexpected increases in fuel prices which exceed those incorporated in WSF's fuel budget. The total ferry fare charged will consist of the base fare plus an automatic, incremental, additional surcharge as calculated according to the formula set forth in this rule.

(2) The method for calculating the fuel surcharge amount shall be as follows:

(a) Determine excess fuel costs for the current quarter by subtracting budgeted fuel costs from actual fuel costs for the quarter. For the purposes of this rule, quarters shall be consistent with the state fiscal year definition of quarters.

(b) To minimize lags in the application of this rule, the quarter will be closed one (~~(week)~~) month prior to the actual end of the quarter, and an estimate of actual costs will be prepared to account for the (~~(missing consumption days)~~) third month and any lags in accounting for actual purchases.

(c) The estimate of (~~(actual)~~) costs for the missing (~~(consumption days)~~) month shall be developed as follows:

(i) Estimated (~~(actual)~~) fuel costs for the third month of the quarter will be based on the Oil Price Information Service (OPIS) daily contract average rack prices for ultra low-sulfur dyed diesel fuel for the first fifteen days of the missing month as reported by the Washington state department of general administration's office of state procurement for Tacoma and Anacortes fuel price data as of the cutoff date.

(ii) Applicable taxes and fees are added to the Anacortes and Tacoma rack prices to derive total estimated cost per gallon for purchases at Anacortes and Tacoma on the missing days.

(iii) Total price per gallon is multiplied by budgeted gallons of fuel for the missing (~~(days)~~) month in the quarter, where gallons are split into estimated purchases at Anacortes and Tacoma prices based on the year-to-date shares of gallons purchased at Tacoma and Anacortes rack prices.

(d) Net excess fuel costs for the quarter shall be determined on the basis of the current estimate of the excess fuel costs for the quarter plus an accounting for the following:

(i) Any necessary reconciliation from the previous quarter's estimate of actual costs once full accounting of actual costs is complete.

(ii) Any necessary adjustments to ensure actual costs reflect budget assumptions regarding the appropriate share of biodiesel fuel or total diesel gallons to be purchased. Where actual gallons purchased or share of biodiesel vary from the assumptions used to develop the budget, the actual costs shall be reduced by the amount that these variations may have

increased costs beyond the amounts assumed in the budget appropriation.

(iii) Subtracting any fuel surcharge revenues collected in the current quarter.

(iv) Adding net excess fuel costs from the previous quarter.

(e) Calculate an excess fuel cost percentage by dividing adjusted excess fuel costs by the current quarter's budgeted fuel costs.

(f) A fuel surcharge amount is then calculated as follows:

(i) Multiply the excess fuel cost percentage by the share of budgeted fuel costs to total operating costs for the current biennium (defined as the specific fuel appropriation divided by the total appropriation made to "Program X - Marine" as provided in the current transportation budget and supporting financial plan); then

(ii) Divide the result by the farebox recovery rate for the current biennium (defined as the fare revenue target divided by total appropriation to "Program X - Marine" as provided in the current transportation budget and supporting financial plan).

(3) A fuel surcharge shall be determined based on the calculation of the surcharge amount (as defined in subsection (2)(f) of this section) and applied to applicable fares as follows:

(a) If the surcharge amount is less than 2.5%, then a fuel surcharge shall not be applied.

(b) If the surcharge amount is equal to or greater than 2.5%, then the surcharge shall be determined as follows:

(i) Surcharge amount is equal to or greater than 2.5% and less than 5% then the surcharge shall be 2.5% of the applicable fare.

(ii) Surcharge amount is equal to or greater than 5% and less than 7.5% then the surcharge shall be 5% of the applicable fare.

(iii) Surcharge amount is equal to or greater than 7.5% and less than 10% then the surcharge shall be 7.5% of the applicable fare.

(iv) Surcharge amount is 10% or greater, the surcharge shall be 10% of the applicable fare.

(c) The surcharge shall be applied to all fares, with resulting fares rounded to the nearest nickel.

(4) WSF shall estimate the need for a fuel surcharge on a quarterly basis, based upon the formula prescribed in this rule, and if a surcharge is to be added or modified, then the department shall:

(a) Notify ORCA partners and customers of the pending surcharge changes at least thirty days prior to implementation of said changes.

(b) Make all surcharge changes effective on the first of the month.

(5) Excess fuel costs shall be reset to zero at the beginning of the biennium.

(6) The amount of any fuel surcharge shall be shown separately on customer receipts.

(7) WSF shall provide an annual report to the legislature, OFM, and the Washington state transportation commission summarizing its fuel cost mitigation activities, including how the department has managed its costs as well as the applica-

tion, performance and impact of fuel surcharges pursuant to this authority.

(8) To facilitate understanding on the part of WSF customers and to ensure a transparent process, an explanation of how the surcharge is applied, including a summary of the actual calculation of the surcharge percentage, shall be described on the WSF web site.

(9) This rule goes into effect on October 1, 2011.

AMENDATORY SECTION (Amending WSR 11-18-034, filed 8/30/11, effective 10/1/11 and 5/1/12)

WAC 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system. Pursuant to chapter 323, Laws of 1997, vessels owned by the Washington state ferry system may be made available for charter subject to operational availability. Execution of a charter agreement as set forth in the statute must precede a commitment to charter. The following actual hourly vessel operating costs have been calculated for establishing the rates to be charged for vessel charters from July 1, ~~((2011))~~ 2013, through June 30, ~~((2012))~~ 2014:

Vessel Class	Deck Crew On Overtime	Deck Crew On Straight Time
Jumbo Mark II	\$(1,851.00) <u>1,906.00</u>	\$(1,877.00) <u>1,843.00</u>
Jumbo	((1,739.00)) <u>1,789.00</u>	((1,762.00)) <u>1,727.00</u>
Super	((1,664.00)) <u>1,711.00</u>	((1,690.00)) <u>1,654.00</u>
Evergreen	((1,057.00)) <u>1,095.00</u>	((1,075.00)) <u>1,048.00</u>
Issaquah	((1,204.00)) <u>1,172.00</u>	((1,222.00)) <u>1,121.00</u>
((Rhododendron)) <u>Kwa-di-Tabil</u>	760.00 <u>1,020.00</u>	771.00) <u>975.00</u>
Hiyu	((626.00)) <u>632.00</u>	((629.00)) <u>600.00</u>

The rate for an individual charter will be calculated by:

(1) Multiplying the actual operating cost set forth above for the vessel that is chartered by the number of hours, or fraction thereof, for which the vessel is chartered;

(2) Adding labor costs, mileage and per diem expenses to determine the total actual costs if the particular charter requires a crew callout; and

(3) Increasing the total actual costs calculated pursuant to subsections (1) and (2) of this section by an appropriate profit margin based on market conditions, and rounding to the nearest fifty dollars.

In the case of charters for the transport of hazardous materials, the transporter is required to pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of the Washington state ferry system.

WSR 13-13-056
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION

[Filed June 17, 2013, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-21-022.

Title of Rule and Other Identifying Information: WAC 468-38-071 Maximums and other criteria for special permits—Divisible, this WAC provides specific rules and vehicle load requirements and exceptions for transporting over legal permitted loads. This revision will authorize and establish requirements for the permitting of overweight divisible loads when a national emergency is declared by the President of [the] United States.

Hearing Location(s): Washington State Department of Transportation, Commission Board Room 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504, on August 16, 2013, at 1:30 p.m.

Date of Intended Adoption: August 16, 2013.

Submit Written Comments to: James L. Wright, P.O. Box 47367, Olympia, WA 98504-7367, e-mail wrightji@wsdot.wa.gov, fax (360) 704-6345, by August 15, 2013.

Assistance for Persons with Disabilities: Contact Grant Heap by August 15, 2013, TTY (360) 705-7796 or (360) 705-6808.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change will authorize and set limits for moving overweight divisible loads when a national emergency is declared by the President of the United States. The Federal Moving Ahead for Progress in the 21st Century (MAP-21) gave states the authority and criteria to establish a permitting process for allowing commercial vehicles to exceed the legal weight limits when transporting relief supplies to a declared emergency location.

Statutory Authority for Adoption: RCW 46.44.098 and 46.44.090.

Statute Being Implemented: RCW 46.44.090.

Rule is necessary because of federal law, Public Law 112-141 – MAP 21 Section 1511.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Fiscal impact is anticipated to be minimal and difficult to forecast. Permit fees are based on the amount of excess weight and the number of miles traveled in the state. There is no historical data to determine the number of vehicles that would utilize the permits to emergency locations.

Enforcement by commercial vehicle enforcement officers, primarily the Washington state patrol (WSP), commercial vehicle division.

Name of Proponent: Federal Highway Administration, governmental.

Name of Agency Personnel Responsible for Drafting: James Wright, 7345 Linderson Way S.W., Tumwater, WA, (360) 704-6345; Implementation: Anne Ford, 7345 Linderson Way S.W., Tumwater, WA, (360) 705-7341; and Enforcement: Captain Jason Berry, WSP, GA Building, 210 11th Street, Olympia, WA, (360) 596-3800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal authorizes overweight divisible loads during a declared emergency but has no impact on reporting, recordkeeping, or any other compliance requirements or costs to businesses small or large.

A cost-benefit analysis is not required under RCW 34.05.328. There are no additional costs or requirements for permitting over legal weight vehicles.

June 17, 2013

Kathryn W. Taylor

Chief of Staff

AMENDATORY SECTION (Amending WSR 11-17-130, filed 8/24/11, effective 9/24/11)

WAC 468-38-071 Maximums and other criteria for special permits—Divisible. (1) **Can a vehicle, or vehicle combination, acquire a permit to exceed the dimensions for legal vehicles in regular operation when moving items of a divisible nature?** Yes. There are specific configurations that receive extra length, extra width, or extra height when carrying a divisible load.

(2) **What configurations can be issued a permit, and how are they measured?** The configurations and measurement criteria are:

(a) An overlength permit may be issued to a truck-tractor to pull a single trailer or semi-trailer, with a trailer length not to exceed fifty-six feet. The measurement for the single trailing unit will be from the front of the trailer (including draw bar when used), or load, to the rear of the trailer, or load, whichever provides the greater distance up to fifty-six feet. Rear overhang may not exceed fifteen feet.

(b) An overlength permit may be issued to a truck-tractor to pull a set of double trailers, composed of a semi-trailer and full trailer or second semi-trailer, with a combined trailer length not to exceed sixty-eight feet. The measurement for double trailers will be from the front of the first trailer, or load, to the end of the second trailer or load, whichever provides the greatest distance up to sixty-eight feet. Note: If the truck-tractor is carrying an allowable small freight compartment (dromedary box), the total combined length of the combination, combined trailer length notwithstanding, is limited to seventy-five feet.

(c) An overlength permit may be issued to a log truck pulling a pole-trailer, trailer combination, carrying two distinct and separate loads, as if it was a truck-tractor pulling a set of double trailers. Measurement for the log truck, pole-trailer, trailer combination will be from the front of the first bunk on the truck to the rear of the second trailer, or load, whichever provides the greatest distance up to sixty-eight feet.

(d) An overheight permit may be issued to a vehicle or vehicle combination, hauling empty apple bins, not to exceed fifteen feet high. Measurement is taken from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(e) An overheight permit may be issued to a vehicle or vehicle combination owned by a rancher and used to haul the rancher's own hay from the rancher's own fields to feed the rancher's own livestock, not to exceed fifteen feet high, measured from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(f) An overwidth permit, termed a tarping system permit, may be issued to a vehicle or vehicle combination for a divisible load when such vehicle is equipped with a tarping system as defined in WAC 468-38-073 (5)(n) and under the following conditions:

(i) The divisible load must be authorized by a tarping system permit in order to display the special conditions on the permit;

(ii) A tarping system permit is required for any divisible load exceeding one hundred and two inches (eight feet six inches) in width but not exceeding nine feet in width, all of which must be within the confines of the tarping system dimensions. For example, bulging of the tarping material, to accommodate the load, is not authorized;

(iii) A tarping system permit is authorized to be used in conjunction with either of the overlength permits authorized under (a) or (b) of this subsection; and

(iv) Vehicles operating with a tarping system permit are exempt from the requirements and restrictions listed in WAC 468-38-075(1).

(3) Are there any measurement exclusive devices related to these permits? Measurements should not include nonload-carrying devices designed for the safe and/or efficient operation of the vehicle, or vehicle combination components, for example: An external refrigeration unit, a resilient bumper, an aerodynamic shell, etc. Safety and efficiency appurtenances, such as, but not limited to, tarp rails and splash suppression devices, may not extend more than three inches beyond the width of a vehicle. The examples are not all inclusive.

(4) Are overweight permits available for divisible loads? Yes. There are specific criteria authorizing overweight permits to divisible loads.

(a) The secretary of transportation, or designee, may issue permits to department vehicles used for the emergent preservation of public safety and/or the infrastructure (i.e., snow removal, sanding highways during emergency winter conditions, emergent debris removal or retainment, etc.). The permits will also be valid for the vehicles in transit to or from the emergent worksite. The special permits may allow:

(i) Weight on axles in excess of what is allowed in RCW 46.44.041;

(ii) Movement during hours of the day, or days of the week, that may be restricted in WAC 468-38-175;

(iii) Exemption from the sign requirements of WAC 468-38-155(7) if weather conditions render such signs ineffectual; and

(iv) Movement at night, that may be restricted by WAC 468-38-175(3), by vehicles with lights that meet the standards for emergency maintenance vehicles established by the commission on equipment.

(b) Additional weight allowances are authorized through special permit for a segment of US-97 from the Canadian border to milepost 331.12 designated as a heavy haul industrial corridor. The permits will authorize vehicles to haul divisible loads weighing up to the Canadian inter-provincial weight limits and must comply with the following requirements:

(i) Vehicles applying for the Canadian weight special permit must be licensed to their maximum legal weight limit in Washington state.

(ii) Displaying the US-97 heavy haul industrial corridor permit does not waive registration fees, fuel taxes, operating authority requirements, future legislative or regulatory changes. Except as provided in the provisions for the heavy weight industrial corridor on US-97, all Washington state and federal laws must be complied with.

(iii) Routes of travel are strictly limited: Both directions of US-97 from the Canadian border at milepost 336.48 to milepost 331.12.

(iv) A Washington state axle spacing report is required for Canadian weight verification.

(v) The following descriptions indicate the maximum weight limits that will be permitted:

(A) Primary steering axle - 600 lbs. (272 kg) per inch (25.4 mm) of width of tire* with a maximum limit of 12,100 lbs.

(B) Other axles - 500 lbs. (227 kg) per inch of width of tire*.

(C) Single axles - 20,000 lbs. (9,100 kg) maximum.

(D) Tandem axles - 37,500 lbs. (17,000 kg) maximum.

*Width of tire is determined by tire side-wall nomenclature.

(E) Tridem axles.

Axle Spread	Pounds	Kilograms
94" (2.4m) to < 118" (3.0m)	46,300	21,000
118" (3.0m) to < 141" (3.6m)	50,700	23,000
141" (3.6m) to < 146" (3.7m)	52,900	24,000

Note: When computing allowable weights, the most conservative figure (whether weight per width of tire, axle weights, or gross weights) will govern.

(F) Maximum gross weight - pounds (kilograms).

Number of Axles	2	3	4	5	6	7	8
Truck	36,000 (16,350)	53,000 (24,250)					

Number of Axles	2	3	4	5	6	7	8
Truck and Full Trailer			74,000 (33,500)	91,000 (41,250)	106,500 (48,250)	118,000 (53,500)	139,994 (63,500)
Truck and Pup		56,200 (25,450)	74,000 (33,550)	91,000 (41,250)	99,800 (45,250)		
Tractor and Semi		52,300 (23,700)	69,700 (31,600)	87,100 (39,500)	95,900 - 102,500*		
A-Train**				92,500 (41,900)	109,800 (49,800)	118,000 (53,500)	118,000 (53,500)
B-Train**				90,000 (40,700)	107,200 (48,600)	124,600 (56,500)	139,994 (63,500)
C-Train**				92,500 (41,900)	109,800 (49,800)	120,500 (54,600)	130,000 (58,500)

*Semi tridem axle spacing and weight limits:
 94" to < 118" (2.4m to < 3.0m) spread - 95,900 lbs. (43,500 kg).
 118" to < 141" (3.0m to < 3.6m) spread - 100,310 lbs. (45,500 kg).
 141" to < 146" (3.6m to < 3.7m) spread - 102,500 lbs. (46,500 kg).
 **Double trailer vehicles definition for this section:
 A-Train: Double trailers coupled by a single drawbar.
 B-Train: Two semi-trailers coupled by a fifth wheel mounted to rear of first trailer.
 C-Train: Double trailers coupled by double drawbars with self-steering dolly axle(s).

(c) Additional weight allowances are authorized through a special permit for the transportation of divisible loads on state highways during national emergencies or major disasters declared by the president. Emergency permits are available for loads that comply with the conditions following:

(i) The national emergency must be declared by the president of the United States;

(ii) Permits are issued exclusively for vehicles and loads that are delivering relief supplies for any destination that is part of the geographical area covered by the emergency declaration;

(iii) The entire permitted load must consist of emergency supplies; and

(iv) The weight limits for an emergency permit are as follows:

(A) Single axle weight not to exceed 21,500 lbs.;

(B) Tandem axle weight not to exceed 43,000 lbs.;

(C) Tridem axle group weight not to exceed 53,000 lbs. (Tridem axle group defined for this section as three consecutive axles more than 8 feet apart but less than 13 feet apart measured from the center of the first axle of the group to the center of the last axle of the group);

(D) 160,000 lbs. gross weight;

(E) Must comply with all bridge and road weight restrictions;

(F) When requested by law enforcement, documents must be displayed describing the permitted load and that it is destined for the declared emergency area;

(G) Emergency permits under this section will expire no later than one hundred twenty calendar days after the date of the emergency declaration; and

(H) Permits authorized by the emergency declaration will not be issued for loads originating in the declared emergency area.

WSR 13-13-061
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed June 18, 2013, 9:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-039.

Title of Rule and Other Identifying Information: WAC 139-10-210 Requirement of basic corrections training.

Hearing Location(s): Washington State Criminal Justice Training Commission (WSCJTC), Room E-154, 19010 1st Avenue South, Burien, WA 98148, on September 11, 2013, at 10 a.m.

Date of Intended Adoption: September 11, 2013.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail shirsch@cjtc.state.wa.us, fax (206) 835-7928, by September 4, 2013.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, rules coordinator, by September 9, 2013, TTY (206) 835-7300 or (206) 835-7372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The language of WAC 139-10-210 is inconsistent with that in RCW 43.101.220. RCW 43.101.220 mandates all corrections personnel to attend basic academy training; WAC 139-10-210 mandates only full-time corrections employees.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Proponent: [WSCJTC], governmental.

Name of Agency Personnel Responsible for Drafting: Brandon Rogel, Burien, Washington, (206) 835-7349; Implementation and Enforcement: Pam Clark, Burien, Washington, (206) 835-7306.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. The changes are not new, as they [are] simply mirroring the language of RCW 43.101.220.

June 18, 2013
Sonja Hirsch
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-16-135, filed 8/5/09, effective 9/5/09)

WAC 139-10-210 Requirement of basic corrections training. As provided in RCW 43.101.220, all ~~((full-time))~~ corrections ~~((employees in the state of Washington with the exception of the Washington state department of corrections prison division or))~~ personnel of any city, county, or political subdivision of the state of Washington, with the exception of the Washington state department of corrections, must, as a condition of continued employment, successfully complete a basic corrections academy as prescribed, sponsored, or conducted by the commission. The commission and the department of corrections share the responsibility of developing and defining training standards and providing training for community corrections officers employed within the community corrections division of the department of corrections. This requirement to complete basic training must be fulfilled within the initial six months of corrections employment unless otherwise extended or waived by the commission. Requests for extension or waiver of the basic training requirement must be submitted to the commission in writing as designated by its policies.

(1) Corrections personnel must attend basic academy training according to job function as described below:

(a) Corrections officers academy. All employees whose primary job function is to provide for the custody, safety, and security of adult prisoners in jails and detention facilities. Representative job classifications include, but are not limited to, custody and corrections officers.

(b) Misdemeanant probation/~~((classification))~~ counselor academy. All employees whose primary job function is the case management of offenders under county/city supervision, to include: Assessment, case planning, counseling, supervision, and monitoring. Representative job classes include, but are not limited to adult probation officers.

(c) Community corrections officers academy and basic arrest, search, and seizure academy. All employees whose primary job function is the case management in the community of adult offenders under state department of corrections supervision, to include: Monitoring adjustment of offenders involved with in/outpatient treatment programs, counseling offenders and/or referring them for counseling or other resource/treatment programs, and making home/field visits pursuant to offender classification standards. Representative job classifications include, but are not limited to, community corrections officers, community risk management specialists, hearings officers, and victim advocates.

(d) Juvenile services academy. All employees working with juveniles whose primary job function is the case management of offenders, to include: Assessment, case planning, counseling, supervision, and monitoring. Representative job classes include, but are not limited to, juvenile probation

counselors, case aides/assistants, trackers, juvenile drug court counselors, and community surveillance officers.

(e) Juvenile corrections officers academy. All employees responsible for the care, custody, and safety of youth in county facilities. Representative job classes include, but are not limited to, juvenile detention workers, juvenile corrections officers, and juvenile supervision officers.

(f) Juvenile ~~((residential counselors))~~ rehabilitation administration academy. All employees responsible for the case management, custody, safety, counseling, supervision, and application of researched based treatment interventions to youth committed to the care and supervision of the juvenile rehabilitation administration. Representative job classes include, but are not limited to, juvenile residential rehabilitation counselors, juvenile rehabilitation community counselors, juvenile rehabilitation counselor assistants, juvenile rehabilitation security officers, juvenile rehabilitation coordinators, and juvenile rehabilitation supervisors.

(2) It is the responsibility of the employing agency to determine the most appropriate basic academy for an employee to attend within the guidelines set by the commission.

An agency may elect to decline basic academy training if such employee occupies a middle management or an executive position, as defined in WAC 139-10-410, 139-10-510, and 139-25-110.

(3) Failure to comply with the above requirements will result in a notification of noncompliance from the commission directed to the individual employee and, as appropriate, the employing agency director, chief or sheriff, the chief executive of the local unit of government, and any other agency or individual determined by the commission.

(4) Each agency employing personnel covered by RCW 43.101.220 is responsible for full and complete compliance with the above training requirements. Additionally, each such agency must provide the commission with employment information necessary for the establishment and maintenance of complete and accurate training records on all affected employees.

WSR 13-13-071

PROPOSED RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed June 18, 2013, 2:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-032.

Title of Rule and Other Identifying Information: WAC 182-546-0150(2) Client eligibility for ambulance transportation and 182-546-0400(2) General limitations on payment for ambulance services.

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/CherryStreet>

DirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000, on July 23, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 24, 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, fax (360) 586-9727, by 5:00 p.m. on July 23, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 17, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to these sections are necessary to begin paying providers under fee-for-service for air ambulance services provided to clients enrolled in agency-contracted managed care organizations. These payments are no longer the responsibility of the pre-paid managed care plans. This change is in accordance with the agency's state plan.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Katie Erickson, P.O. Box 45500, Olympia, WA 98504-5500, (360) 725-1678.

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

June 18, 2013
Kevin M. Sullivan
Rules Coordinator

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

WAC 182-546-0150 Client eligibility for ambulance transportation. (1) Except for clients in the Family Planning Only and TAKE CHARGE programs, ~~((MAA))~~ fee-for-service clients are eligible for ambulance transportation to ~~((MAA))~~ covered services with the following limitations:

(a) Clients in the following programs are eligible for ambulance services within Washington state or bordering cities only, as designated in WAC ~~((388-501-0175))~~ 182-501-0175:

(i) ~~((General assistance-unemployable (GA-U)))~~ Medical care services (MCS) as described in WAC 182-508-0005;

(ii) ~~((General assistance-expedited medical (GA-X))~~;

~~((iii) General assistance-pregnancy (GA-S))~~;

~~((iv))~~ Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) as described in WAC 182-508-0320;

~~((v) Emergency medical programs, including))~~ (iii) Alien emergency medical (AEM)~~((;~~

~~((vi) LCP-MNP emergency medical only; and~~

~~((vii) State Children's Health Insurance Program (CHIP) when the client is not enrolled in a managed care plan))~~ services as described in chapter 182-507 WAC.

(b) Clients in the categorically needy/qualified medicare beneficiary (CN/QMB) and medically needy/qualified medicare beneficiary (MN/QMB) programs are covered by medicare and medicaid, with the payment limitations described in WAC ~~((388-546-0400(5)))~~ 182-546-0400(5).

(2) Clients enrolled in an ~~((MAA))~~ agency-contracted managed care ~~((plan receive all))~~ organization (MCO) must coordinate:

(a) Ground ambulance services through their designated ~~((plan))~~ MCO, subject to the ~~((plan's))~~ MCO coverage~~((s))~~ and limitations; and

(b) Air ambulance services through the agency under fee-for-service, subject to the coverage and limitations within this chapter.

(3) Clients enrolled in ~~((MAA's))~~ the agency's primary care case management (PCCM) program are eligible for ambulance services that are emergency medical services or that are approved by the PCCM in accordance with ~~((MAA))~~ the agency's requirements. ~~((MAA))~~ The agency pays for covered services for these clients according to ~~((MAA's))~~ the agency's published ~~((billing instructions))~~ medicaid provider guides and provider notices.

(4) Clients under the Involuntary Treatment Act (ITA) are not eligible for ambulance transportation coverage outside the state of Washington. This exclusion from coverage applies to individuals who are being detained involuntarily for mental health treatment and being transported to or from bordering cities. See also WAC ~~((388-546-4000))~~ 182-546-4000.

(5) See WAC ~~((388-546-0800))~~ 182-546-0800 and ~~((388-546-2500))~~ 182-546-2500 for additional limitations on out-of-state coverage and coverage for clients with other insurance.

(6) The agency does not pay for ambulance services for jail inmates and persons living in a correctional facility ~~((are not eligible for MAA ambulance coverage))~~. See WAC ~~((388-503-0505(5)))~~ 182-503-0505(5).

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

WAC 182-546-0400 General limitations on payment for ambulance services. (1) In accordance with WAC ~~((388-502-0100(8)))~~ 182-502-0100(8), the ~~((medical assistance administration (MAA)))~~ agency pays providers the lesser of the provider's usual and customary charges or the maximum allowable rate established by ~~((MAA))~~ the agency. ~~((MAA's))~~ The agency's fee schedule payment for ambulance services includes a base rate or lift-off fee plus mileage.

(2) ~~((MAA))~~ The agency:

(a) Does not pay providers under fee-for-service for ground ambulance services provided to a client who is enrolled in an ~~((MAA))~~ agency-contracted managed care ~~((plan))~~ organization (MCO). Payment in such cases is the

responsibility of the ~~((prepaid managed care plan))~~ client's agency-contracted MCO:

(b) Pays providers under fee-for-service for air ambulance services provided to a client who is enrolled in an agency-contracted MCO.

(3) ~~((MAA))~~ The agency does not pay providers for mileage incurred traveling to the point of pickup or any other distances traveled when the client is not on board the ambulance. ~~((MAA))~~ The agency pays for loaded mileage only as follows:

(a) ~~((MAA))~~ The agency pays ground ambulance providers for the actual mileage incurred for covered trips by paying from the client's point of pickup to the point of destination.

(b) ~~((MAA))~~ The agency pays air ambulance providers for the statute miles incurred for covered trips by paying from the client's point of pickup to the point of destination.

(4) ~~((MAA))~~ The agency does not pay for ambulance services if:

(a) The client is not transported;

(b) The client is transported but not to an appropriate treatment facility; or

(c) The client dies before the ambulance trip begins (see the single exception for ground ambulance providers at WAC ~~((388-546-0500(2)))~~ 182-546-0500(2)).

(5) For clients in the categorically needy/qualified medicare beneficiary (CN/QMB) and medically needy/qualified medicare beneficiary (MN/QMB) programs ~~((MAA's))~~ the agency's payment is as follows:

(a) If medicare covers the service, ~~((MAA))~~ the agency will pay the lesser of:

(i) The full coinsurance and deductible amounts due, based upon medicaid's allowed amount; or

(ii) ~~((MAA's))~~ The agency's maximum allowable for that service minus the amount paid by medicare.

(b) If medicare does not cover or denies ambulance services that ~~((MAA))~~ the agency covers according to this chapter, ~~((MAA))~~ the agency pays ~~((at MAA's))~~ its maximum allowable fee; except ~~((MAA))~~ the agency does not pay for clients on the qualified medicare beneficiaries (QMB) only program.

WSR 13-13-074

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-27—Filed June 19, 2013, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-22-068.

Title of Rule and Other Identifying Information: Procurement of unauthorized (surplus line) insurance.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on July 23, 2013, at 1:30 p.m.

Date of Intended Adoption: July 24, 2013.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by July 22, 2013.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by July 22, 2013, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 48.15.040 requires that any surplus line insurance must be procured through a licensed surplus line broker. This proposed rule identifies what activities constitute the "procurement" of surplus line insurance and clarifies that these activities must be performed by a licensed surplus line broker.

Reasons Supporting Proposal: RCW 48.15.040 requires that any surplus line insurance must be procured through a Washington licensed surplus line broker.

Statutory Authority for Adoption: RCW 48.02.060 and 48.15.015.

Statute Being Implemented: RCW 48.15.020 and 48.15-040.

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

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

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: John Hamje, P.O. Box 40256, Olympia, WA 98504-0256, (360) 725-7262.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposed WAC 284-15-015 does three things:

(A) It provides a definition of the word "procured" as used in chapters 48.15 RCW and 284-15 WAC. This definition ("acts necessary to obtain insurance coverage") in this context is essentially a paraphrasing of the dictionary definition of procured: "to get possession of - obtain, especially with care and effort."

(B) It restates a key provision of RCW 48.15.040(1) for procuring surplus line coverage - that procurement must be through a surplus line broker if the person acquiring coverage from an unauthorized insurer is not a surplus lines broker.

(C) It effectively states that all of the provisions already existing in the RCW (and its related WAC) for surplus lines procurement must be carried out by a surplus lines broker, which paraphrases the statutory language and clear intent of the cited sections.

This proposed WAC addition therefore is a rule whose "content is explicitly and specifically dictated by statute" (RCW 34.05.328 (5)(b)(v)) and therefore does not require a cost-benefit analysis.

A cost-benefit analysis is not required under RCW 34.05.328. Proposed WAC 284-15-015 does three things:

(A) It provides a definition of the word "procured" as used in chapters 48.15 RCW and 284-15 WAC. This definition ("acts necessary to obtain insurance coverage") in this context is essentially a paraphrasing of the dictionary definition of procured: "to get possession of - obtain, especially with care and effort."

(B) It restates a key provision of RCW 48.15.040 (1) for procuring surplus line coverage - that procurement must be through a surplus line broker if the person acquiring coverage from an unauthorized insurer is not a surplus lines broker.

(C) It effectively states that all of the provisions already existing in the RCW (and its related WAC) for surplus lines procurement must be carried out by a surplus lines broker, which paraphrases the statutory language and clear intent of the cited sections.

This proposed WAC addition therefore is a rule whose "content is explicitly and specifically dictated by statute" (RCW 34.05.310 (4)(e)) and therefore does not require a small business economic impact statement under the provisions of RCW 19.85.025(3).

June 19, 2013
Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-15-015 Courtesy filing prohibited. (1) "Procured" as used in chapter 48.15 RCW and chapter 284-15 WAC means the act or acts necessary to obtain insurance coverage.

(2) A surplus line broker licensed under chapter 48.15 RCW must not assist a person in complying with the requirements of RCW 48.15.040 if the person:

- (a) Is not licensed under chapter 48.15 RCW;
- (b) Obtains insurance coverage from an unauthorized insurer; and
- (c) Fails to procure the insurance coverage through a surplus line broker licensed under chapter 48.15 RCW.

This subsection applies without limitation to the services of a courtesy filer.

WSR 13-13-075
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed June 19, 2013, 9:27 a.m.]

Supplemental notice to WSR 13-06-073 filed on March 6, 2013.

Preproposal statement of inquiry was filed as WSR 13-01-064 on December 17, 2012.

Title of Rule and Other Identifying Information: WAC 220-40-021 Salmon—Willapa Bay summer fishery, 220-40-027 Salmon—Willapa Bay fall fishery, and 220-56-105 River mouth definitions.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on Tuesday, July 23, 2013, at 10:00 a.m. - 11:30 a.m.

Date of Intended Adoption: On or after July 24, 2013.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by July 16, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by July 16, 2013, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal reflects changes from the rules as proposed in WSR 13-06-073 filed on March 6, 2013. This supplemental filing does not include rules for Grays Harbor that were included in WSR 13-06-073. Grays Harbor rules are likely to be amended via a separate supplemental CR-102. Interested persons can check the status of these rules by using this link, <http://wdfw.wa.gov/about/regulations/development.html>, and selecting "2013 North of Falcon commercial salmon rules for Willapa Bay and Grays Harbor."

These changes incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable numbers of fish in commercial salmon fisheries in Willapa Bay while protecting species of fish listed as endangered. These changes also incorporate the subgroup's recommendations for river mouth definitions for boundary changes proposed during the North of Falcon process.

Reasons Supporting Proposal: These rules will protect species of fish listed as endangered while supporting commercial salmon fishing in Willapa Bay and will allow for improved demarcation of river boundaries.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.020, 77.12.045, and 77.12.047.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: A separate CR-102 supplemental will be filed for the North of Falcon commercial salmon fishery in Grays Harbor.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1213; Implementation: James Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Willapa Bay.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None - these rule changes clarify dates for

anticipated open periods, show areas in Willapa Bay that are closed to commercial harvest methods, and explain legal gear requirements.

3. Costs of Compliance for Businesses, Including Costs Of Equipment, Supplies, Labor, and Increased Administrative Costs: None anticipated - these rules are similar to previous years' rules for Willapa Bay and no extra costs of compliance are required.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Cost of Compliance for the Ten Percent Of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

There are no anticipated costs of compliance.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The department issues an annual pamphlet and mailer to all license holders to alert them to anticipated open periods, closed areas, and gear requirements.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department cosponsors the annual North of Falcon process, which is a series of public meetings held over a period of several months from February through April each year. These meetings allow constituents to provide input on the rules contained in this filing.

8. A List of Industries that Will Be Required to Comply With the Rule: The industry that is required to comply with these rules is composed of all licensed fishers using legal commercial gear types and seeking to harvest salmon in the all-citizen commercial salmon fisheries occurring in Willapa Bay.

A copy of the statement may be obtained by contacting Lori Preuss, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Lori.preuss@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

June 19, 2013

Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-11-093, filed 5/18/12, effective 6/18/12)

WAC 220-40-021 Willapa Bay salmon—Summer fishery. From July 5 through August 15, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for coho salmon, white sturgeon, and adipose fin-clipped hatchery Chinook salmon:

Time:

6:00 ~~((p.m.))~~ a.m. August 12 through ~~((11:59))~~ 6:00 p.m. August 15, ~~((2012))~~ 2013.

6:00 a.m. August 12 through 6:00 p.m. August 13, 2013

Areas:

~~((2M,))~~ Area 2N, Area 2R, Area 2T, and Area 2U

Area 2M

Gear:

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

~~((Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.~~

~~Only one net may be fished at a time; other nets must be properly stored.))~~

It is unlawful to use a gillnet to fish for salmon or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transit through Willapa Bay, provided the net is properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

(b) Mesh size must not exceed nine inches.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping

system is delivering the proper volume of fresh river/bay water into each chamber.

(b) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(c) All wild (unmarked) Chinook, chum, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or an operating recovery box when fishing in Willapa Bay Salmon Management Catch Reporting Areas (SMCRA) 2M, 2N, 2R, 2T, and 2U.

(d) Any steelhead or salmon that is required to be released and is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay. The recovery box must meet the requirements in (a) of this subsection.

(e) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240~~((12))~~ (14), reports must be made by 10:00 a.m. the day following landing.

(5) Retention of any species other than coho salmon, white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, and hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited.

(6) Report ALL encounters of wild (unmarked) Chinook, green sturgeon, and steelhead (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon to be retained must have a fork-length measure of no less than 43 inches and no more than 54 inches.

(8) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size and all green sturgeon, obtain available information from tags without removing the tags.

(9) It is unlawful to fish with gillnet gear in Areas ~~((2K,))~~ 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

(10) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on August 8, ~~((2012))~~ 2013.

AMENDATORY SECTION (Amending WSR 12-11-093, filed 5/18/12, effective 6/18/12)

WAC 220-40-027 Salmon—Willapa Bay fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for coho salmon, white sturgeon, and adipose fin-clipped hatchery Chinook:

Time:	Area:
((12:00 a.m.)) <u>6:00 p.m.</u>	((Area 2M, Area)) <u>2N,</u>
August ((16)) <u>19</u> through	((Area)) <u>2R, ((Area 2T),</u>
6:00 ((a.m.)) <u>p.m.</u> August	and ((Area)) <u>2U</u>
((16, 2012)) <u>20, 2013;</u>	
6:00 p.m. August 21 through	((Area 2U))
6:00 ((a.m.)) <u>p.m.</u> August	
22, ((2012)) <u>2013;</u>	
6:00 p.m. August 26 through	((Area 2N, Area 2R, and
6:00 a.m. August 27,	Area 2U))
((2012)) <u>2013;</u>	
AND	
6:00 p.m. August 28 through	
6:00 a.m. August 29,	
((2012)) <u>2013;</u>	
6:00 p.m. ((August 30))	((Area)) <u>2M, 2N, 2R, and</u>
<u>September 3</u> through 6:00	((Area)) <u>2U</u>
a.m. ((August 31, 2012))	
<u>September 4, 2013;</u>	
6:00 p.m. September ((4)) <u>5</u>	((Area)) <u>2N, ((Area)) 2R,</u>
through 6:00 a.m. September	and ((Area)) <u>2U</u>
((5, 2012)) <u>6, 2013;</u>	
((AND	
6:00 p.m. September 6-	
through 6:00 a.m. Septem-	
ber 7, 2012;))	
6:00 p.m. September 9	((Area)) <u>2M, ((Area)) 2N,</u>
through 6:00 ((a.m.)) <u>p.m.</u>	((Area)) <u>2R, ((Area 2T, east</u>
September 10, ((2012))	<u>of a line projected from the</u>
<u>2013;</u>	<u>eastern most upland at Toke</u>
AND	<u>Point (approximately 46° 42'</u>
6:00 p.m. September 12	<u>26"N, 123° 57' 58"W) to</u>
through 6:00 ((a.m.)) <u>p.m.</u>	<u>Goose Point (approximately</u>
September 13, ((2012))	<u>46° 38' 12" N, 123° 57' 31"</u>
<u>2013;</u>	<u>W) then to the eastern</u>
	<u>boundary at Range Marker</u>
	<u>"B" (located at 46° 42' 34"</u>
	<u>N, 123° 51' 18" W),))</u> and
	((Area)) <u>2U</u>

Time: Area:
~~((6:00 p.m. September 19 through 6:00 p.m. September 20, 2012;~~ **Area 2K**
 AND
 6:00 p.m. September 26 through 6:00 p.m. September 27, 2012))
 6:00 p.m. September 15 through 6:00 p.m. October **((Area) 2M, ((Area) 2N, ((Area) 2R, ((Area) and 2T((, and Area 2U))**
 ((13, 2012)) 12, 2013;
 ((AND))
6:00 p.m. September 15 through 5:59 a.m. September 22, 2013;
6:01 p.m. September 22 through 5:59 a.m. September 29, 2013; **2U**
6:01 p.m. September 29 through 5:59 a.m. October 6, 2013;
 AND
6:01 p.m. October 6 through 6:00 p.m. October 12, 2013;
 12:00 p.m. November 6 through 12:00 p.m. November **2M, 2N, 2R, 2T, and 2U**
 ((30, 2012)) 20, 2013.

Gear:

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

~~((Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.~~

~~Only one net may be fished at a time; other nets must be properly stored.)~~

It is unlawful to use a gillnet to fish for salmon and/or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or ~~((in))~~ transiting through Willapa Bay, provided the net is properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

(b) From August ~~((46))~~ 19 through September 13, ~~((2012))~~ 2013: Mesh size must not exceed nine-inch maximum mesh.

(c) From September 15 through ~~((October 31, 2012))~~ September 22, 2013: Mesh size must not exceed six ~~((and one-half))~~ inch maximum mesh.

(d) From September 23 through October 12, 2013: Mesh size must not exceed six and one-half inch maximum mesh.

(e) From November 6 through November ~~((30, 2012))~~ 20, 2013: ~~((Mesh size must be nine-inch minimum mesh, except that from 6:00 p.m. November 11 through 6:00 p.m. November 19, 2012 (echo directed);))~~ There are two alternatives for mesh size:

- (i) Use six and one-half inch maximum mesh; or
- (ii) Use nine-inch minimum mesh.

Only one net of either six and one-half inch or nine-inch configuration, not exceeding fifteen hundred feet, may be used when in the act of fishing.

Other:

(3) Recovery boxes and soak time:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas ~~((2K,))~~ 2M, 2N, 2R, 2T, and 2U from August ~~((46))~~ 19 through October ~~((31, 2012))~~ 12, 2013. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(b) From August ~~((46))~~ 19 through October ~~((31, 2012))~~ 12, 2013, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(c) From August ~~((46))~~ 19 through October ~~((31, 2012))~~ 12, 2013, all chum, nonlegal sturgeon, all steelhead, and wild (unmarked) Chinook must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas ~~((2K,))~~ 2M, 2N, 2R, 2T, and 2U.

From November 6 through November ~~((30, 2012))~~ 20, 2013, all chum, all nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must

be released immediately to the river/bay when fishing in Wilapa Bay Areas 2M, 2N, 2R, 2T, and 2U.

(d) Any steelhead or salmon required to be released and is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay. The recovery box must meet the requirements in (a) of this subsection.

(e) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(~~((12))~~) (14), reports must be made by 10:00 a.m. the day following landing.

(5) Retention of any species other than coho salmon, white sturgeon with fork length measure not less than 43 inches and not more than 54 inches, and hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(6) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon to be retained must have a fork length measure of no less than 43 inches and no more than 54 inches.

(8) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size and all green sturgeon, obtain available information from tags without removing tags.

(9) It is unlawful to fish with gillnet gear in Areas (~~(2K,)~~) 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

(10) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on August (~~((15, 2012))~~) 13, 2013.

AMENDATORY SECTION (Amending Order 12-190, filed 8/23/12, effective 9/23/12)

WAC 220-56-105 River mouth definitions. When pertaining to angling, unless otherwise defined, any reference to the mouths of rivers or streams includes those waters of any river or stream, including sloughs and tributaries, upstream and inside of a line projected between the outermost uplands at the mouth. The term "outermost upland" means those lands not covered by water during an ordinary high tide. The following river mouths are hereby otherwise defined:

Abernathy Creek - Highway 4 Bridge.

Bear River - Highway 101 Bridge.

Bone River - Highway 101 Bridge.

California Creek - Drayton Harbor Road Bridge.

Chambers Creek - Burlington Northern Railroad Bridge.

Chehalis River - Highway 101 Bridge in Aberdeen.

Chelan River - Railroad Bridge.

Cispus River - Posted markers at the Lewis County P.U.D. kayak launch, approximately 1.5 miles upstream from the confluence of the Cowlitz and Cispus rivers.

Cowlitz River - A line projected across the river between two fishing boundary markers set on each bank of the river approximately one-half mile downstream from the lowermost railroad bridge crossing the Cowlitz River.

Dakota Creek - A line from the outermost headland of the south bank to a house at 1285 Runge Avenue, Blaine, Washington, approximately one-quarter mile downstream from the Blaine Road Bridge.

Deschutes River - A line projected across the river 400 feet below the lower Tumwater Falls fish ladder.

Drano Lake - Highway 14 Bridge.

Duwamish River - First Avenue South Bridge.

Elk River - Highway 105 Bridge.

Entiat River - Highway 97 Bridge.

Hawk Creek (Lincoln County) - Falls at the Hawk Creek campground.

Hoquiam River - Highway 101 Bridge.

Humtulsips River - Mouth of Jessie Slough.

Johns River - Highway 105 Bridge.

Kennedy Creek - An arc 500 yards east of the midpoint of the northbound Highway 101 Bridge.

Kettle River - Barstow Bridge.

Lake Washington Ship Canal - A line 400 feet west of the fish ladder at the Chittenden Locks.

Lewis River - A straight line running from a fishing boundary marker or from the outermost upland at the north shore of the Lewis River mouth, southerly across the Lewis River to a fishing boundary marker near the south shore.

McLane Creek - A line 100 feet upstream of and parallel to the southernmost Highway 101 Bridge.

Methow River - Highway 97 Bridge.

Naselle River - Highway 101 Bridge.

North Nemah River - Highway 101 Bridge.

Niawiakum River - Highway 101 Bridge.

- Nisqually River - At the upstream end of Alder Lake, the mouth of the Nisqually River is the Highway 7 Bridge at Elbe.
- North River - Highway 105 Bridge.
- Palix River - Highway 101 Bridge.
- Puyallup River - 11th Street Bridge.
- Samish River - The Samish Island Bridge (Bayview-Edison Road).
- Sammamish River - 68th Avenue NE Bridge.
- Skagit River - A line projected from the terminus of the jetty with McGlenn Island to the white monument on the easterly end of Ika Island, then to a white monument on the westerly end of Craft Island, then to a white monument near the corner of the levee on the westerly side of Dry Slough, and then to a white monument on the easterly side of Tom Moore Slough.
- Skamokawa Creek - Highway 4 Bridge.
- Skookum Creek - A line 400 yards below the old railroad bridge.
- Snohomish River - Burlington Northern Railway Bridges crossing main river and sloughs.
- South Nemah River - Lynn Point 117 degrees true to the opposite shore.
- Spokane River - State Route 25 Bridge.
- Tahuya River - North Shore Rd. Bridge.
- Wallace River - The furthest downstream railroad bridge.
- Washougal River - A straight line from the Crown Zellerbach pumphouse southeasterly across the Washougal River to the east end of the Highway 14 Bridge near the upper end of Lady Island.
- Whatcom Creek - A line projected approximately 14 degrees true from the flashing light at the southwest-erly end of the Port of Bellingham North Terminal to the southernmost point of the dike surrounding the Georgia Pacific treatment pond.
- Little White Salmon River - At boundary markers on river bank downstream from the Little White Salmon National Fish Hatchery.
- Willapa River - City of South Bend boat launch.
- Wind River - Boundary line markers at mouth.
- Yakima River - Highway 240 Bridge.

WSR 13-13-076**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed June 19, 2013, 9:49 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 WAC 388-310-1800 WorkFirst—Post employment services, 388-410-0001 What is a cash/medical assistance overpayment?, 388-410-0005 Cash and medical assistance overpayment amount and liability, 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance?, 388-466-0150 Refugee employment and training services, and 388-472-0040 What are the department's responsibilities in giving NSA services to me?

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 July 23, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 24, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 23, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 2, 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 community services division is proposing to amend the above WACs to remove medical language references from rules regarding post-employment services, overpayments, diversion cash assistance, refugee employment and training services, and NSA services. These changes are necessary as the 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 20, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-22-061, filed 10/29/10, effective 12/1/10)

WAC 388-310-1800 WorkFirst—Post employment services. (1) **What is the purpose of post employment services?**

Post employment services help TANF or SFA parents who are working twenty hours or more a week keep and cope with their current jobs, look for better jobs, gain work skills for a career and become self sufficient.

(2) **How do I obtain post employment services?**

(a) You can obtain post employment services by:

(i) Asking for a referral from the local community service office;

(ii) Contacting community or technical colleges; or

(iii) Contacting the employment security department.

(3) **Who provides post employment services and what kind of services do they provide?**

(a) The employment security department can help you increase your wages, increase your job skills or find a better job by providing you with:

(i) Employment and career counseling;

(ii) Labor market information;

(iii) Job leads for a better job (sometimes called job development);

(iv) On the job training;

(v) Help with finding a job that matches your interests, abilities and skills (sometimes called job matching); and

(vi) Help with finding a new job after job loss (sometimes called reemployment).

(b) Any Washington state technical and community college can approve a skill-training program for you that will help you advance up the career ladder. Their staff will talk to you, help you decide what training would work best for you and then help you get enrolled in these programs. The college may approve the following types of training for you at any certified institution:

(i) High school/GED,

(ii) Vocational education training,

(iii) Job skills training,

(iv) Adult basic education,

(v) English as a second language training, or

(vi) Preemployment training.

(4) **What other services are available while you receive post employment services?**

While you receive post employment services, you may qualify for:

(a) Working connections childcare if you meet the criteria for this program (described in chapter 170-290 WAC).

(b) Other support services, such as help in paying for transportation or work expenses if you meet the criteria for this program (WAC 388-310-0800).

(c) Other types of assistance for low-income families such as food stamps(~~(, medical assistance)~~) or help with getting child support that is due to you and your children.

(5) **Who is eligible for post employment services?**

If you are a current TANF or SFA recipient, you may qualify for post employment services if you are working twenty hours or more a week, unless you are in sanction status.

(6) **What if I lose my job while I am receiving post employment services?**

If you now receive TANF or SFA, help is available to you so that you can find another job and continue in your approved post employment services.

(a) The employment security department will provide you with reemployment services.

(b) At the same time, your case manager can approve support services and childcare for you.

AMENDATORY SECTION (Amending WSR 05-08-124, filed 4/5/05, effective 6/1/05)

WAC 388-410-0001 What is a cash(~~(/medical)~~) assistance overpayment? (1) An overpayment is any cash (~~(or medical)~~) assistance paid that is more than the assistance unit was eligible to receive.

(2) There are two types of cash(~~(/medical)~~) overpayments:

(a) Intentional overpayments, presumed to exist if you willfully or knowingly:

(i) Fail to report a change you must tell us about under WAC 388-418-0005 within the time frames under WAC 388-418-0007; or

(ii) Misstate or fail to reveal a fact affecting eligibility as specified in WAC 388-446-0001.

(b) Unintentional overpayments, which includes all other client-caused and all department-caused overpayments.

(3) If you request a fair hearing and the fair hearing decision is in favor of the department, then:

(a) Some or all of the continued assistance you get before the fair hearing decision must be paid back to the department (see WAC 388-418-0020); and

(b) The amount of assistance you must pay back will be limited to sixty days of assistance, starting with the day after the department receives your hearing request.

(4) If you receive child support payments directly from the noncustodial parent, you must turn these payments over to the division of child support (DCS). These payments are not cash assistance overpayments.

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

WAC 388-410-0005 Cash ~~((and medical))~~ assistance overpayment amount and liability. (1) The amount of overpayment for cash ~~((and medical))~~ assistance households is determined by the amount of assistance received to which the assistance unit was not entitled.

(2) Cash ~~((and medical assistance))~~ overpayments are recovered from:

(a) Any individual member of an overpaid assistance unit, whether or not the member is currently a recipient; or

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member.

(3) A cash ~~((or medical))~~ assistance overpayment is not recovered from:

(a) A nonneedy caretaker relative or guardian who received no financial benefit from the payment of assistance; or

(b) A person not receiving assistance when an unintentional overpayment of less than thirty-five dollars is discovered and/or computed.

(4) Overpayments resulting from incorrectly received cash assistance are reduced by:

(a) Cash assistance a household would have been eligible to receive from any other category of cash assistance during the period of ineligibility; and

(b) Child support the department collected for the month of overpayment in excess of the amount specified in (a) of this subsection; or

(c) Any existing grant underpayments.

(5) A cash assistance overpayment cannot be reduced by a ~~((medical or))~~ food assistance underpayment.

~~((6)) ((A medical assistance overpayment cannot be reduced by a cash or food assistance underpayment.~~

~~((7))~~ An underpayment from one assistance unit cannot be credited to another assistance unit to offset an overpayment.

~~((8))~~ (7) All overpayments occurring after January 1, 1982 are required to be repaid by mandatory grant deduction except where recovery is inequitable as specified in WAC 388-410-0010.

AMENDATORY SECTION (Amending WSR 10-24-064, filed 11/30/10, effective 12/31/10)

WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance? DSHS has a program called diversion cash assistance (DCA). If your family needs an emergency cash payment but does not need ongoing monthly cash assistance, you may be eligible for this program.

(1) To get DCA, you must:

(a) Meet all the eligibility rules for temporary assistance for needy families (TANF)/state family assistance (SFA) except:

(i) You do not have to participate in WorkFirst requirements as defined in chapter 388-310 WAC; and

(ii) You do not have to assign child support rights or cooperate with division of child support as defined in chapter 388-422 WAC.

(b) Have a current bona fide or approved need for living expenses;

(c) Provide proof that your need exists; and

(d) Have or expect to get enough income or resources to support yourselves for at least twelve months.

(2) You may get DCA to help pay for one or more of the following needs:

(a) Child care;

(b) Housing;

(c) Transportation;

(d) Expenses to get or keep a job;

(e) Food costs, but not if an adult member of your family has been disqualified for food stamps; or

(f) Medical costs, except when an adult member of your family is not eligible because of failure to provide third party liability (TPL) information as defined in WAC ~~((388-505-0540))~~ 182-503-0540.

(3) DCA payments are limited to:

(a) One thousand two hundred fifty dollars once in a twelve-month period which starts with the month the DCA benefits begin; and

(b) The cost of your need.

(4) We do not budget your income or make you use your resources to lower the amount of DCA payments you can receive.

(5) DCA payments can be paid:

(a) All at once; or

(b) As separate payments over a thirty-day period. The thirty-day period starts with the date of your first DCA payment.

(6) When it is possible, we pay your DCA benefit directly to the service provider.

(7) You are not eligible for DCA if:

(a) Any adult member of your assistance unit got DCA within the last twelve months;

(b) Any adult member of your assistance unit gets TANF/SFA;

(c) Any adult member of your assistance unit is not eligible for cash assistance for any reason unless one parent in a two-parent-assistance unit is receiving SSI; or

(d) Your assistance unit does not have a needy adult (such as when you do not receive TANF/SFA payment for yourself but receive it for the children only).

(8) If you apply for DCA after your TANF/SFA grant has been terminated, we consider you an applicant for DCA.

(9) If you apply for TANF/SFA and you received DCA less than twelve months ago:

(a) We set up a DCA loan.

(i) The amount of the loan is one-twelfth of the total DCA benefit times the number of months that are left in the twelve-month period.

(ii) The first month begins with the month DCA benefits began.

(b) We collect the loan only by reducing your grant. We take five percent of your TANF/SFA grant each month.

(10) If you stop getting TANF/SFA before you have repaid the loan, we stop collecting the loan unless you get back on TANF/SFA.

AMENDATORY SECTION (Amending WSR 00-22-085, filed 10/31/00, effective 12/1/00)

WAC 388-466-0150 Refugee employment and training services. (1) What are refugee employment and training services?

Refugee employment and training services provided to eligible refugees may include information and referral, employment oriented case management, job development, job placement, job retention, wage progression, skills training, on-the-job training, counseling and orientation, English as a second language, and vocational English training.

(2) Am I required to participate in refugee employment and training services?

If you are receiving refugee cash assistance (RCA) you are required to participate in refugee employment and training services, unless you are exempt.

(3) How do I know if I am exempt from mandatory employment and training requirements?

(a) You may be exempt from participation in employment and training requirements if:

(i) You are needed in the home to personally provide care for your child under three months of age (see WAC 388-310-0300);

(ii) You are sixty years of age or older.

(b) You can not be exempt from work and training requirements solely because of an inability to communicate in English.

(4) If I am required to participate, what do I have to do?

You are required to:

(a) Register with your employment service provider;

(b) Accept and participate in all employment opportunities, training or referrals, determined appropriate by the department.

(5) What happens if I do not follow these requirements?

If you refuse without good reason to cooperate with the requirements, you are subject to the following penalties:

(a) If you are applying for refugee cash (~~and medical~~) assistance, you will be ineligible for thirty days from the date of your refusal to accept work or training opportunity; or

(b) If you are already receiving refugee cash (~~and medical~~) assistance, your cash benefits will be subject to financial penalties.

(c) The department will notify your voluntary agency (VOLAG) if financial penalties take place.

(6) What are the penalties to my grant?

The penalties to your grant are:

(a) If the assistance unit includes other individuals as well as yourself, the cash grant is reduced by the sanctioned refugee's amount for three months after the first occurrence. For the second occurrence the financial penalty continues for the remainder of the sanctioned refugee's eight-month eligibility period.

(b) If you are the only person in the assistance unit your cash grant is terminated for three months after the first occurrence. For the second occurrence, your grant is terminated for the remainder of your eight-month eligibility period.

(7) How can I avoid the penalties?

You can avoid the penalties, if you accept employment or training before the last day of the month in which your cash grant is closed.

(8) What is considered a good reason for not being able to follow the requirements?

You have a good reason for not following the requirements if it was not possible for you to stay on the job or to follow through on a required activity due to an event outside of your control. See WAC 388-310-1600(3) for examples.

AMENDATORY SECTION (Amending WSR 01-10-104, filed 5/1/01, effective 6/1/01)

WAC 388-472-0040 What are the department's responsibilities in giving NSA services to me? (1) All of our staff are continually responsible to identify you as possibly NSA eligible and assist you with NSA services.

(2) We provide a grace period to continue your financial(;) or food (~~or medical~~) assistance when:

(a) We stop a benefit because we are unable to tell if you continue to qualify; and

(b) You provide proof you still qualify for the benefit within the twenty days right after the benefit stops. We restore lost benefits (~~as follows:~~

~~(i) We reopen your medical assistance from the first of the month; and~~

~~(ii) We~~), recalculate your cash and food assistance, and issue you the correct amount without taking away any benefits as long as you were eligible to receive them.

WSR 13-13-077

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed June 19, 2013, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-013.

Title of Rule and Other Identifying Information: WAC 388-15-085 How does an alleged perpetrator challenge a founded CPS finding? and 388-15-093 What happens after the alleged perpetrator requests CPS to review the founded CPS finding of child abuse or neglect?

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 July 23, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 24, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 23, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 9, 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:

To change the time frames:

- An alleged perpetrator of child abuse and/or neglect has to request CPS review a founded CPS finding of child abuse and neglect (from twenty days to thirty days) and;
- By which the review is to be completed (from sixty days to thirty days).

The changes in these time frames will provide consistency with current RCW and children's administration policy.

Reasons Supporting Proposal: Amending WAC 388-15-085(2) and 388-15-093(3) to ensure WAC is consistent with RCW 26.44.125 (2) and (4) time frames. RCW changed in the 2012 legislative session. RCW 26.44.125 is one part of state law that ensures Washington state access to funds provided through the federal Child Abuse Prevention and Treatment Act (CAPTA) of 1974 (P.L. 93-247) and the Child Abuse Prevention and Treatment Act (CAPTA) Reauthorization Act of 2010-P.L. 111-320.

Statutory Authority for Adoption: RCW 26.44.125 (2) and (4).

Statute Being Implemented: RCW 26.44.125 (2) and (4).

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: Department of social and health services, children's administration, governmental.

Name of Agency Personnel Responsible for Drafting: Deanna Bedell, Children's Administration, (360) 902-0863; Implementation and Enforcement: Keli Drake, Children's Administration, (360) 902-7871.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required. These rules are dictated by Washington state statute.

A cost-benefit analysis is not required under RCW 34.05.328. Not required. These rules are dictated by Washington state statute.

June 11, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-085 How does an alleged perpetrator challenge a founded CPS finding? (1) In order to challenge a founded CPS finding, the alleged perpetrator must make a written request for CPS to review the founded CPS finding of child abuse or neglect. The CPS finding notice must provide the information regarding all steps necessary to request a review.

(2) The request must be provided to the same CPS office that sent the CPS finding notice within ((~~twenty~~) thirty) calendar days from the date the alleged perpetrator receives the CPS finding notice (RCW 26.44.125).

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-093 What happens after the alleged perpetrator requests CPS to review the founded CPS finding of child abuse or neglect? (1) CPS management level staff or their designees who were not involved in the decision making process will review the founded CPS finding of child abuse or neglect. The management staff will consider the following information:

(a) CPS records;

(b) CPS summary reports; and

(c) Any written information the alleged perpetrator may have submitted regarding the founded CPS finding of abuse and/or neglect.

(2) Management staff may also meet with the CPS social worker and/or CPS supervisor to discuss the investigation/finding. After review of all this information, management staff decides if the founded CPS finding is correct or if it should be changed.

(3) Management staff must complete their review of the founded CPS finding within ((~~sixty~~) thirty) calendar days from the date CPS received the written request for review.

WSR 13-13-083

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 19, 2013, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-01-088.

Title of Rule and Other Identifying Information: The department is amending chapter 388-106 WAC, specifically the New Freedom directed services.

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 July 23, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 24, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 23, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 9, 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 amending rules in order to make program revisions.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

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

Name of Agency Personnel Responsible for Drafting and Implementation: Andrea Meewes-Sanchez, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2554; and Enforcement: Susan Engels, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2527.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

June 17, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-0040 Who can provide long-term care services? The following types of providers can provide long-term care services:

(1) Individual providers (IPs), who provide services to clients in their own home. IPs must meet the requirements outlined in WAC 388-71-0500 through 388-71-05909.

(2) Home care agencies, who provide services to clients in their own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-336 WAC and contracted with area agency on aging.

(3) Residential providers, which include licensed adult family homes and boarding homes, who contract with the department to provide assisted living, adult residential care, and enhanced adult residential care services (which may also include specialized dementia care).

(4) Providers who have contracted with the department to perform other services.

(5) In the case of New Freedom consumer directed services (NFCDS), additional providers meeting NFCDS HCBS waiver requirements contracting with a department approved provider of fiscal management services.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0050 What is an assessment? (1) An assessment is an in-person interview in your home or your place of residence that is conducted by the department to inventory and evaluate your ability to care for yourself. The department will assess you at least annually or more often when there are significant changes to your ability to care for yourself.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the depart-

ment may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

(a) Errors made by department staff in coding the information from your in-person interview;

(b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);

(c) Changes in the level of informal support available to you; or

(d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary (~~(and assessment details)~~).

AMENDATORY SECTION (Amending WSR 07-01-046, filed 12/14/06, effective 1/14/07)

WAC 388-106-1315 Do I have a right to an administrative hearing if my total in-home personal care hours or New Freedom budget approved as an exception to rule are reduced or terminated or if my increased residential payment rate approved as an exception to rule is reduced or terminated? Notwithstanding WAC 388-440-0001(3), you have a right to an administrative hearing regarding the department's exception to rule decision if:

(1) You receive services in your own home, and:

(a) The total number of in-home personal care hours you are currently receiving includes in-home personal care hours approved as an exception to rule in addition to the number of in-home care hours determined to be available to you by CARE; and

(b) The total number of in-home personal care hours or New Freedom budget you are currently receiving is reduced because of a reduction or termination in the number of in-home personal care hours approved as an exception to rule.

(2) You receive services in a residential facility, and:

(a) You currently have an increased residential payment rate approved as an exception to rule; and

(b) Your increased residential payment rate that was approved as an exception to rule is reduced or terminated.

AMENDATORY SECTION (Amending WSR 10-08-074, filed 4/6/10, effective 5/7/10)

WAC 388-106-1400 What services may I receive under New Freedom consumer directed services (NFCDS)? (1) In order for services, supports, and/or items to be purchased under New Freedom, they must:

(a) Be for your sole benefit;

(b) Be at a reasonable cost;

(c) Meet your identified needs and outcomes in the CARE assessment and address your health, safety, and welfare; and

(d) Be documented on your New Freedom spending plan defined in WAC 388-106-0010. The spending plan, which is established with the Care Consultant, documents how you will spend your service budget dollars.

(2) Your consultant may require a physician or other licensed professional, such as an occupational or physical therapist to recommend a specific purchase in writing. This recommendation is needed to ensure the service, support and/or item will increase, maintain, or delay decline of functional abilities, and to ensure the purchase supports your health and welfare.

(3) Medicare or medicaid state plan benefits must be used prior to using New Freedom funds if the goods or services are covered under these programs.

(4) You may use your individual budget to purchase services, supports, and/or items that fall into the following service categories:

(a) **Personal assistance services**, defined as supports involving the labor of another person to assist you to carry out activities you are unable to perform independently. Services may be provided in your home or in the community and may include:

(i) Direct personal care services defined as assistance with activities of daily living, as defined in WAC 388-106-0010(3). These must be provided by a qualified individual provider or AAA-contracted homecare agency;

(ii) Delegated nursing tasks, per WAC 246-841-405 and 388-71-05830. Providers of direct personal care services may be delegated by a registered nurse to provide nurse delegated tasks according to RCW 18.79.260 and WAC 246-840-910 through 246-840-970;

(iii) ~~((Homemaking, or assistance with instrumental activities of daily living (essential shopping, housework and meal preparation);~~

~~((iv))~~ Other tasks or assistance with activities that support independent functioning, and are necessary due to your functional disability;

~~((v))~~ (iv) Personal assistance with transportation(3) or assistance with instrumental activities of daily living (essential shopping, housework, and meal preparation).

(b) **Treatment and health maintenance**, defined as treatments or activities that are beyond the scope of the medicaid state plan that are necessary to promote your health and ability to live independently in the community and:

(i) Are provided for the purpose of preventing further deterioration of your level of functioning, or improving or maintaining your current level of functioning; and

(ii) Are performed or provided by people with specialized skill, registration, certification or licenses as required by state law.

(c) **Individual directed goods, services and supports**, defined as services, equipment or supplies not otherwise provided through this waiver or through the medicaid state plan; and

(i) Will allow you to function more independently; or

(ii) Increase your safety and welfare; or

(iii) Allow you to perceive, control, or communicate with your environment; or

(iv) Assist you to transition from an institutional setting to your home. Transition services may include safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings and basic items essential for basic living outside

the institution. Transition services do not include rent, recreational or diverting items such as TV, cable or VCR/DVDs.

(d) **Environmental or vehicle modifications**, defined as alterations to your residence or vehicle that are necessary to accommodate your disability and promote your functional independence, health, safety, and/or welfare.

(i) Environmental modifications cannot be adaptations or improvements that are of general utility or merely add to the total square footage of the home.

(ii) Vehicles subject to modification must be owned by you or a member of your family who resides with you; must be in good working condition, licensed, and insured according to Washington state law; and be cost effective when compared to available alternative transportation.

(e) **Training and educational supports**, defined as supports beyond the scope of medicaid state plan services that are necessary to promote your health and ability to live and participate in the community and maintains, slows decline, or improves functioning and adaptive skills. Examples include:

(i) Training or education on your health issues, or personal skill development;

(ii) Training or education to paid or unpaid caregivers related to your needs.

(5) You may receive comprehensive adult dental services as defined in WAC 388-106-0300(15). The cost of the dental services will not be deducted from your individual budget.

AMENDATORY SECTION (Amending WSR 10-08-074, filed 4/6/10, effective 5/7/10)

WAC 388-106-1405 What services are not covered under New Freedom consumer directed services (NFCDS)? Services, supports and/or items that cannot be purchased within New Freedom budgets, including, but not limited to:

(1) Services, supports and/or items covered by the state plan, medicare, or other programs or services.

(2) Any fees related to health or long-term care incurred by you, including co-pays, waiver cost of care (participation), or insurance.

(3) Home modifications that merely add square footage to your home.

(4) Vacation expenses other than the direct cost of provision of personal care services while on vacation (but you may not use New Freedom funds to pay travel expenses for your provider).

(5) Rent or room and board.

(6) Tobacco or alcohol products;

(7) Lottery tickets.

(8) Entertainment-related items such as televisions, cable, ~~((8))~~ DVD players, stereos, radios, computers and other electronics, nonadaptive in nature.

(9) Vehicle purchases, maintenance or upgrades that do not include maintenance to modifications related to disability.

(10) Tickets and related costs to attend sporting or other recreational events.

(11) ~~((Routine))~~ Standard household supplies, furnishings, equipment, and maintenance, ~~((basic food, clothing,))~~ such as cleaning supplies, beds/mattresses, chairs, vacuum cleaners, outside window cleaning, and major household appliances, such as washing machines or refrigerators (unless purchased while transitioning from an institution to home).

(12) Pets, therapy animals and their related costs (including food and veterinary services).

(13) Postage outside of shipping costs related to approved spending plan items.

(14) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-500-0070.

(15) Gym equipment or exercise equipment over one hundred dollars per year.

(16) Monthly service fees for utilities.

(17) Warranties (for equipment, furnishings or installations).

(18) Cosmetic services and treatments (i.e. manicures, pedicures, hair services, face lifts, etc).

(19) Basic groceries, clothing and footwear.

(20) Travel-related expenses.

(21) Any item previously purchased through medicaid funding that is within the health care authority replacement period.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-1410 Am I eligible for New Freedom consumer directed services (NFCDS)-funded services? You are eligible for NFCDS-funded services if you reside in your own home and meet all of the following criteria. The department must assess your needs using CARE and determine that:

(1) You are in NFCDS HCBS waiver specified target groups of:

(a) Eighteen or older and blind or have a physical disability; or

(b) Sixty-five or older; and

(C) You reside in a county where New Freedom is offered.

(2) You meet financial eligibility requirements described in WAC 182-513-1315. This means the department will assess your finances, determine if your income and resources fall within the limits, and determine the amount you may be required to contribute, if any, toward the cost of your care as described in WAC ~~((388-515-1505))~~ 182-515-1505; and

(3) You:

(a) Are not eligible for medicaid personal care services (MPC); or

(b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide; and

(4) Your CARE assessment shows you need the level of care provided in a nursing facility as defined in WAC 388-106-0355; and

(5) You live in your own home, or will be living in your own home by the time NFCDS start.

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

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-1415 When do New Freedom consumer directed services (NFCDS) start? ~~((Your eligibility for NFCDS begins the date the department authorizes services.))~~ Your New Freedom services begin the date personal care provider(s) are authorized to begin providing services or the spending plan is approved.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-1420 How do I remain eligible for New Freedom consumer directed services (NFCDS)? (1) In order to remain eligible for NFCDS, you must be in need of services in accordance with WAC 388-106-1410, as determined through a CARE assessment and continue to meet the financial eligibility requirements in WAC 182-513-1315.

(a) The CARE assessment must be performed at least annually or more often when there are significant changes in your functional or financial circumstances.

(b) Your continued financial eligibility is reviewed annually.

(2) When eligibility statutes, regulations, and/or rules for NFCDS change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your NFCDS services.

AMENDATORY SECTION (Amending WSR 10-08-074, filed 4/6/10, effective 5/7/10)

WAC 388-106-1422 What happens to my New Freedom service dollar budget if I am temporarily hospitalized, placed in a nursing facility or intermediate care facilities for the mentally retarded (ICF/MR)? If you are admitted to a hospital, nursing home or ICF/MR, you cannot access or accumulate funds to your New Freedom service budget during your stay.

If you are institutionalized for forty-five days or less and you intend to return to New Freedom when discharged, your service budget will be temporarily suspended. Upon discharge home, your service budget will be reinstated if you are still eligible for New Freedom services.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-1425 How do I pay for New Freedom consumer directed services (NFCDS)? (1) Depending on your income ~~((and resources))~~, you may be required to pay participation toward the cost of your care, as described in WAC ~~((388-515-1505))~~ 182-515-1505. If you have nonexempt income that exceeds the cost of NFCDS services, you

may keep the difference. Since you are receiving services in your own home, you are allowed to keep some of your income for a maintenance allowance.

(2) You are responsible to pay for any required cost of care on a monthly basis before the department pays for any goods or services and before any budget monies are accrued in or moved to savings.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-1430 Can I be employed and receive New Freedom consumer directed services (NFCDS)? You can be employed and receive NFCDS, if eligible, per WAC ~~((388-515-1505))~~ 182-515-1505.

AMENDATORY SECTION (Amending WSR 10-08-074, filed 4/6/10, effective 5/7/10)

WAC 388-106-1445 How is the amount of the individual budget determined? The department will calculate your individual budget amount after you are assigned a ~~((classification))~~ number of monthly hours resulting from completion of the comprehensive assessment reporting and evaluation tool, CARE. The calculation will be based on ~~((=~~

~~((a))~~ the ((hourly)) average wage, including a mileage allowance, as determined by the collective bargaining agreement for individual provider personal care paid by the department multiplied by the number of ~~((hours))~~ units generated by the assessment, multiplied by a factor of ~~((.95))~~ .93, plus an amount equal to the average per participant expenditures for nonpersonal care supports purchased in the COPEs waiver. ~~((The average will be recalculated in July of each year.))~~

~~((b))~~ If you select a home care agency, an adjustment will be made for each hour of personal care identified in the NFSP for an amount equal to the difference between the published individual provider rate and home care agency rate.))

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

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-1450 Is the individual budget intended to fully meet all of my needs? The program provides funds in an amount proportionate to the amount of resources you would receive through COPEs, and gives you flexibility to self-direct the purchase of goods and services to ~~((meet))~~ address your long-term care needs. The degree to which the budget meets your needs depends on the supports you identify and prioritize in your spending plan. Depending on your decisions, after your budget is exhausted, some of your needs may be unmet, or you may find other resources to address them.

AMENDATORY SECTION (Amending WSR 10-08-074, filed 4/6/10, effective 5/7/10)

WAC 388-106-1455 What happens to ~~((unused)) individual budget funds ((from my individual budget)) when I don't use them?~~ (1) ~~((Unused funds, up to three thousand dollars, may be held in reserve for future purchases documented in the NFSP.))~~ The balance of individual budget funds that were not allocated for purchase of personal care may be used to purchase other goods and services in accordance with the approved New Freedom spending plan or saved for future purchase as described in (2) below.

~~((2))~~ ~~((Reserves in excess of))~~ Up to three thousand five hundred dollars may be ~~((maintained))~~ held in savings for ~~((planned))~~ future purchases ~~((with approval from the department))~~ documented in the New Freedom spending plan.

~~((2))~~ Unused funds, up to five hundred dollars, may be held in reserve for future purchases not yet identified as planned purchases in their NFSP.))

(3) Reserves in excess of three thousand five hundred dollars may only be maintained for exceptional, planned purchases with pre-approval from the department.

(4) Unused funds will revert back to the department under the following circumstances:

(a) You have savings funds ~~((over five hundred dollars))~~ in excess of three thousand five hundred dollars that are not identified for ~~((planned))~~ exceptional, pre-approved purchases in your ~~((NFSP))~~ spending plan;

(b) You dis-enroll from New Freedom;

(c) You lose eligibility for New Freedom;

(d) You are hospitalized and/or placed in a nursing home or ICM/FR for over forty-five days; or

(e) You have ~~((reserved funds in excess of three thousand dollars held in reserve for future purchases not approved by the department))~~ personal care funds not used in the month for which you allocated them.

NEW SECTION

WAC 388-106-1458 How do I create and use my spending plan? (1) You create your spending plan with the assistance of the Care Consultant using the New Freedom self-assessment and the CARE assessment.

(2) The spending plan must be approved by both you and the Care Consultant.

(3) You and your Care Consultant must identify how many personal care service units you intend to purchase prior to the month you plan to use them (service month). The value of those units is deducted from your New Freedom budget. The rest of funds can be used for other covered goods and services or saved.

(a) Once a service month begins, the number of personal care units may not be altered during that month.

(b) The maximum number of personal care units that can be purchased from the monthly budget is calculated from the individual budget as described in WAC 388-106-1445, divided by the individual provider average wage including mileage.

(c) Prior to the service month, you may elect to use savings funds to buy additional personal care.

(d) You can choose to have your personal care provided by an individual provider (IP) or a home care agency. Each unit will be deducted from your New Freedom budget at the average IP wage rate including mileage.

(e) The balance of your individual New Freedom budget will be available in your NFSP to save or purchase other goods and services up to the limit described in WAC 388-106-1455(2).

(f) If you have a change of condition or situation and your New Freedom budget increases due to a new assessment or Exception to Rule, you may purchase additional personal care from an IP or home care agency mid-month at the average IP rate, including mileage during the month your budget changed.

(g) You may assign your pre-determined personal care units to a different provider during the month of service.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-1460 When can my New Freedom spending plan (NFSP) be denied? Your NFSP may be denied when the plan you develop includes noncovered items from WAC 388-106-1405 and/or does not:

(a) Include only services in the New Freedom service definition found in WAC 388-106-1400;

(b) Address your needs as it relates to performance of activities of daily living and instrumental activities of daily living;

(c) Include strategies and steps to address known critical risks;

(d) Identify ~~((the))~~ a reasonable payment rate; or

(e) Adequately describe the service.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-1465 Who can deny my New Freedom spending plan (NFSP)? Your plan can be denied by your New Freedom consultant, who assists NFCDS participants to develop and use a New Freedom spending plan to:

(a) ~~((Meet))~~ Address identified personal care, health and safety needs;

(b) ~~((Address health and safety needs;~~

~~((e)))~~ Develop options to meet those needs;

~~((d)))~~ (c) Make informed decisions about their individual budget; and

~~((e)))~~ (d) Obtain identified supports and services.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-1475 How do I end enrollment in New Freedom consumer directed services (NFCDS)? (1) You may choose to voluntarily end your enrollment from NFCDS without cause at any time. To do so, you must give notice to the department. If you give notice:

(a) Before the fifteenth of the month, the department will end your enrollment at the end of the month; or

(b) After the fifteenth, the department will end your enrollment the end of the following month.

(2) Your enrollment may also end involuntarily if you:

(a) Move out of the designated service area or are out of the service area for more than thirty consecutive days, unless you have documented the purpose of the longer absence in the NFSP; or

(b) Do not meet the terms for consumer direction of services outlined in the NFCDS enrollment agreement when:

(i) Even with help from a representative, you are unable to develop a NFSP or self-direct services or manage your individual budget or NFSP;

(ii) Any one factor or several factors of such a magnitude jeopardize the health, welfare, and safety of you and others, requiring termination of services under WAC 388-106-0047;

(iii) You become financially ineligible for medicaid services; ~~((or))~~

(iv) You no longer meet the nursing facility level of care requirement as defined in WAC 388-106-0355; or

(v) You misuse program funds and services as determined by the department.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-1480 What are my hearing rights to appeal New Freedom consumer directed services (NFCDS) assessment and eligibility actions? You have a right to a hearing under WAC 388-106-1300 through ~~((388-106-1310))~~ 388-106-1315, and under chapter ~~((388-02))~~ 182-526 WAC.

WSR 13-13-084

PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed June 19, 2013, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-086 on May 1, 2013.

Title of Rule and Other Identifying Information: The subject of this proposed rule-making effort is the amendment of migratory waterfowl seasons and regulations in WAC 232-28-436 for the 2013-2014 hunting season.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on August 2-3, 2013, at 8:30 a.m.

Date of Intended Adoption: On or after August 2, 2013.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by July 19, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by July 26, 2013, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to migratory waterfowl seasons and regulations are to provide recreational activity and resource conservation.

Reasons Supporting Proposal: To provide hunting opportunity and agricultural damage control consistent with the status of waterfowl species, and establish waterfowl hunting seasons within frameworks established by the United States Fish and Wildlife Service.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.32.070.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, and 77.32.070.

Rule is necessary because of federal law, C.F.R. Title 50, Part 20; Migratory Bird Treaty Act.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nate Pamplin, Natural Resources Building, Olympia, (360) 902-2693; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not directly regulate small business.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not related to hydraulics rules.

June 19, 2013

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-18-001, filed 8/22/12, effective 9/22/12)

WAC 232-28-436 ((2012-13)) 2013-2014 Migratory waterfowl seasons and regulations.

DUCKS

Statewide: Oct. ((13-17, 2012)) 12-16, 2013 and Oct. ((20, 2012)) 19, 2013 - Jan. ((27, 2013)) 26, 2014.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. ((22-23, 2012)) 21-22, 2013.

Daily Bag Limit: 7 ducks, to include not more than 2 hen mallard, 2 pintail, 1 canvasback, and 2 redhead statewide; and to include not more than 1 harlequin, 2 scoter, 2 long-tailed duck, and 2 goldeneye in Western Washington.

Possession Limit: 14 ducks, to include not more than 4 hen mallard, 4 pintail, 2 canvasback, and 4 redhead statewide; and to include not more than 1 harlequin, 4 scoter, 4 long-tailed duck, and 4 goldeneye in Western Washington.

Season Limit: 1 harlequin in Western Washington.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SEA DUCKS

Hunters must possess a special ((2012-))2013-2014 hunting authorization and harvest record card for sea ducks when hunting harlequin, scoter, long-tailed duck, and goldeneye in Western Washington. Hunters who did not possess a ((2011-12)) 2012-13 sea duck harvest record card must submit an

application form to Washington state department of fish and wildlife (WDFW). Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest record card.

COOT (Mudhen)

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily Bag Limit: 25 coots.

Possession Limit: 25 coots.

SNIPE

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily Bag Limit: 8 snipe.

Possession Limit: 16 snipe.

GEESE (except Brant)

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. ((22-23, 2012)) 21-22, 2013, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily Bag Limit: 4 Canada geese.

Possession Limit: 8 Canada geese.

Western Washington Goose Seasons

Goose Management Area 1: Island, Skagit, Snohomish counties. Oct. ((13, 2012)) 12, 2013 - Jan. ((27, 2013)) 26, 2014 for snow, Ross', and blue geese. Oct. ((13-25, 2012)) 12-24, 2013 and Nov. ((3, 2012)) 2, 2013 - Jan. ((27, 2013)) 26, 2014 for other geese (except brant).

Daily Bag Limit: 4 geese.

Possession Limit: 8 geese.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SNOW GEESE

Hunters must purchase a special ((2012-13)) 2013-14 migratory bird hunting authorization and harvest record card for snow geese when hunting snow, Ross', and blue geese in Goose Management Area 1. Hunters who did not possess a ((2011-12)) 2012-13 snow goose harvest record card must submit an application form to WDFW. Immediately after taking a snow, Ross', or blue goose into possession, hunters must record in ink the information required on the harvest record card.

SNOW GOOSE QUALITY HUNTING PROGRAM IN GOOSE MANAGEMENT AREA 1

All hunters must obey posted signs regarding access restrictions. Quality hunt units are not available for commercial uses.

SKAGIT COUNTY SPECIAL RESTRICTIONS

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir

Island in Skagit County or to discharge a firearm for the purpose of hunting snow geese within 100 feet of any paved public road in other areas of Skagit County.

While hunting snow geese, if a hunter is convicted of (a) trespass; (b) shooting from, across, or along the maintained part of any public highway; (c) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or discharging a firearm within 100 feet of any paved public road for the purpose of hunting snow geese in other areas of Skagit County; or (d) exceeding the daily bag limit for geese, authorization will be invalidated for the remainder of the current snow goose season and an authorization will not be issued for the subsequent snow goose season.

Goose Management Area 2A

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River: Open in all areas except Ridgefield NWR from 8:00 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, Nov. ~~((10-25, 2012))~~ 9 - Dec. 1, 2013 and Dec. ~~((5, 2012))~~ 11, 2013 - Jan. ~~((27, 2013))~~ 26, 2014, except closed Dec. 25, 2013 and Jan. 1, 2014. Ridgefield NWR open from 8:00 a.m. to 4:00 p.m., Tuesdays, Thursdays, and Saturdays only, Nov. ~~((10-24, 2012))~~ 9-30, 2013 and Dec. ~~((6, 2012))~~ 12, 2013 - Jan. ~~((26, 2013))~~ 25, 2014, except closed Nov. ~~((22, 2012, Dec. 25, 2012, and Jan. 1, 2013))~~ 28, 2013.

Bag Limits for Goose Management Area 2A:

Daily Bag Limit: 4 geese, to include not more than 1 dusky Canada goose and 3 cackling geese.

Possession Limit: 8 geese, to include not more than 1 dusky Canada goose and 6 cackling geese.

Season Limit: 1 dusky Canada goose.

Goose Management Area 2B

Pacific County: Open from 8:00 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. ~~((13-24, 2012))~~ 12-23, 2013 and Nov. ~~((3, 2012))~~ 2, 2013 - Jan. ~~((19, 2013))~~ 18, 2014.

Bag Limits for Goose Management Area 2B:

Daily Bag Limit: 4 geese, to include not more than 1 dusky Canada goose, 3 cackling geese, and 1 Aleutian goose.

Possession Limit: 8 geese, to include not more than 1 dusky Canada goose, 6 cackling geese, and 2 Aleutian geese.

Season Limit: 1 dusky Canada goose.

Special Provisions for Goose Management Areas 2A and 2B:

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

The goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed

area quotas which collectively total ~~((40))~~ 80 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of ~~((40))~~ 80 dusky, to be distributed ~~((5))~~ 15 for Zone 1 (Ridgefield NWR); ~~((5))~~ 25 for Zone 2 (Cowlitz County south of the Kalama River); ~~((15))~~ 20 for Zone 3 (Clark County except Ridgefield NWR); ~~((7))~~ 10 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and ~~((8))~~ 10 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunters must possess a special ~~((2012-13))~~ 2013-14 migratory bird hunting authorization for Goose Management Area 2A/2B and daily goose harvest record card when hunting geese in Goose Management Areas 2A and 2B. New hunters and those who did not maintain a valid ~~((2011-12))~~ 2012-13 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

Immediately after taking any goose into possession, hunters must record in ink the information required on the harvest record card. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. All geese shall be presented intact and fully feathered at the check station. If a hunter takes the season bag limit of 1 dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest record card, authorization will be invalidated and the hunter will not be able to hunt geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

Special Late Goose Season for Goose Management Area 2A:

Open to WDFW master hunter program graduates and youth hunters (15 years of age or under, who are accompanied by a master hunter) possessing a valid ~~((2012-13))~~ 2013-14 southwest Washington goose hunting authorization and harvest record card, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.: Saturdays and Wednesdays only, Feb. ~~((2))~~ 1 - Mar. ~~((6, 2013))~~ 5, 2014.

Daily Bag Limit: 4 geese, to include not more than 1 dusky Canada goose and 3 cackling geese.

Possession Limit: 8 geese, to include not more than 1 dusky Canada goose and 6 cackling geese.

Season Limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. WDFW will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds ((45)) 85 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

Goose Management Area 3

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B: Oct. ((13-25, 2012)) 12-24, 2013 and Nov. ((3, 2012)) 2, 2013 - Jan. ((27, 2013)) 26, 2014.

Daily Bag Limit: 4 geese.

Possession Limit: 8 geese.

Eastern Washington Goose Seasons

Goose Management Area 4

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties: Saturdays, Sundays, and Wednesdays only during Oct. ((13, 2012)) 12, 2013 - Jan. ((20, 2013)) 19, 2014; Nov. ((22 and 23, 2012)) 28 and 29, 2013; Dec. ((25)) 26, 27, ((28)) 30, and 31, ((2012)) 2013; ((Jan-1, 2013;)) and every day Jan. ((21-27, 2013)) 20-26, 2014.

Goose Management Area 5

Includes all parts of Eastern Washington not included in Goose Management Area 4: Oct. ((13-15, 2012)) 12-14, 2013, every day from Oct. ((20, 2012)) 19, 2013 - Jan. ((27, 2013)) 26, 2014.

Bag Limits for all Eastern Washington Goose Management Areas:

Daily Bag Limit: 4 geese.

Possession Limit: 8 geese.

BRANT

Open in Skagit County only on the following dates: Jan. ((12, 13, 16, 19, 20, 23, 26, and 27, 2013)) 11, 12, 15, 18, 19, 22, 25, and 26, 2014.

If the ((2012-13)) 2013-14 pre-season brant population in Skagit County is below 6,000 (as determined by the ((early January)) midwinter waterfowl survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates: Jan. ((5, 6, 8, 10, 12, 13, 15, 17, 19, and 20, 2013)) 4, 5, 7, 9, 11, 12, 14, 16, 18, and 19, 2014.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT BRANT

Hunters must possess a special ((2012-13)) 2013-14 migratory bird hunting authorization and harvest record card for brant when hunting brant. Hunters who did not possess a ((2011-12)) 2012-13 brant harvest record card must submit an application form to WDFW. Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest record card.

Bag Limits for Skagit and Pacific counties:

Daily Bag Limit: 2 brant.

Possession Limit: 4 brant.

SWANS

Season closed statewide.

MANDATORY REPORTING FOR MIGRATORY BIRD HARVEST RECORD CARDS

Hunters must report ((2012-13)) 2013-14 harvest information from band-tailed pigeon harvest record cards to WDFW for receipt by Sept. 30, ((2012)) 2013, and harvest information from brant, sea duck, and snow goose harvest record cards to WDFW for receipt by Feb. 15, ((2013)) 2014. Every person issued a migratory bird hunting authorization and harvest record card must return the entire card to WDFW or report the card information at the designated internet site listed on the harvest record card. Any hunter failing to report by the deadline will be in noncompliance of reporting requirements. Hunters who have not reported hunting activity by the reporting deadline for any harvest record card acquired in ((2012-13)) 2013-14 will be required to pay a \$10 administrative fee before any new ((2013-14)) 2014-15 migratory bird authorization and harvest record card will be issued. A hunter may only be penalized a maximum of \$10 during a license year.

FALCONRY SEASONS

DUCKS, COOTS, AND SNIPE (Falconry)

(Bag limits include geese and mourning doves.)

Oct. ((13-17, 2012)) 12-16, 2013 and Oct. ((20, 2012)) 19, 2013 - Jan. ((27, 2013)) 26, 2014 statewide.

Daily Bag Limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession Limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

GEESE (Falconry)

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. ((13, 2012)) 12, 2013 - Jan. ((27, 2013)) 26, 2014 for snow, Ross', or blue geese. Oct. ((13-25, 2012)) 12-24, 2013 and Nov. ((3, 2012)) 2, 2013 - Jan. ((27, 2013)) 26, 2014 for other geese.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. (~~(10-25, 2012)~~) 9-24, 2013 and Dec. (~~(5, 2012)~~) 4, 2013 - Jan. (~~(27, 2013)~~) 26, 2014.

Goose Management Area 2B: Saturdays and Wednesdays only, Oct. (~~(13-24, 2012)~~) 12-23, 2013 and Nov. (~~(3, 2012)~~) 2, 2013 - Jan. (~~(19, 2013)~~) 18, 2014.

Goose Management Areas 3, 4, and 5: Oct. (~~(13-14, 2012)~~) 12-13, 2013 and Nov. (~~(3, 2012)~~) 2, 2013 - Jan. (~~(27, 2013)~~) 26, 2014.

Daily Bag Limit for All Areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession Limit for All Areas: 6 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

WSR 13-13-085
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed June 19, 2013, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-043 on April 25, 2013.

Title of Rule and Other Identifying Information: The subject of this proposed rule-making effort is the amendment of wildlife interaction regulations, in chapter 232-36 WAC.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on August 2-3, 2013, at 8:30 a.m.

Date of Intended Adoption: On or after August 2, 2013.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by July 19, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by July 26, 2013, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments implement 2013 legislation and expand the conditions for mitigating wolf/human conflicts to include non-commercial operators and the types of domestic animal losses that may be compensated by the department. The proposed amendments make the wildlife conflict rules consistent with the wolf management plan within current statutes, encourage cooperative agreements with the department to prevent and mitigate losses other than documented mortalities to livestock, and allow citizens to protect their domestic animals from attack by wolves.

Reasons Supporting Proposal: To address human/wildlife conflicts and property damage.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.240, chapter 77.36 RCW and ESSB [E2SSB] 5193.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.240, chapter 77.36 RCW and ESSB [E2SSB] 5193.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nate Pamplin, Natural Resources Building, Olympia, (360) 902-2693; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not directly regulate small business.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not related to hydraulics rules.

June 19, 2013
Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

WAC 232-36-030 Definitions. Definitions used in rules of the fish and wildlife commission are defined in RCW 77.08.010, and the definitions for wildlife interactions are defined in RCW 77.36.010. In addition, unless otherwise provided, the following definitions are applicable to this chapter:

"Act of damaging" means that private property is in the process of being damaged by wildlife (~~(, and the wildlife are on the private property, which contains commercial crops, pasture, or livestock)~~).

"Attack" means that there is evidence to support the fact that animal to animal contact has occurred or is imminent.

"Big game" means those animals listed in RCW 77.08.-030.

"Claim" means an application to the department for compensation under this chapter.

"Claimant" means owner of commercial crop or livestock who has filed a wildlife damage claim for cash compensation.

"Commercial crop" means a commercially raised horticultural and/or agricultural product and includes the growing or harvested product, but does not include livestock, forest land, or rangeland. For the purposes of this chapter, Christmas trees and managed pasture grown using agricultural methods including one or more of the following: Seeding, planting, fertilizing, irrigating, and all parts of horticultural trees, are considered a commercial crop and are eligible for cash compensation.

(~~"Commercial livestock" means cattle, sheep, and horses held or raised by a person for sale.~~)

"Compensation" means a cash payment, materials, or service.

"Completed written claim" means that all of the information required on a department crop or livestock damage claim form is supplied and complete, including all supplemental information and certifications required to process the claim.

"Damage" means economic losses caused by wildlife interactions.

"Damage claim assessment" means department approved methods to evaluate crop loss and value caused by deer or elk damage to commercial crops, or livestock losses and value caused by bear, cougar, or wolves.

"Domestic animal" means any animal that is lawfully possessed and controlled by a person.

"Eligible farmer" means an owner who satisfies the definition of eligible farmer pursuant to RCW 82.08.855 (4)(b)(i) through (iv).

"Emergent" means an unforeseen circumstance beyond the control of the landowner or tenant, that presents a real and immediate threat to crops, domestic animals, or fowl.

"Game animal" means wild animals that shall not be hunted except as authorized by the commission.

"Guard dog" means dogs trained for the purpose of protecting livestock from attack by wildlife or for herding livestock.

"Immediate family member" means spouse, state registered domestic partner, brother, sister, grandparent, parent, child, or grandchild.

"Immediate threat of physical harm" means that animal-to-human bodily contact is imminent; and the animal is in attack posture/mode.

"Livestock" means horses, cattle, sheep, goats, swine, donkeys, mules, llamas, and alpacas.

"Owner" means a person who has a legal right to commercial crops, commercial livestock, or other private property that was damaged during a wildlife interaction.

"Physical act of attacking" means actual or imminent animal-to-human physical contact.

"Public hunting" means an owner satisfies the "public hunting" requirement for his or her land, as defined in WAC 232-36-300.

"Wild animal" means those species of the class Mammalia whose members exist in Washington in a wild state.

"Wildlife control operator" means a person who has successfully completed the training and obtained one or more levels of certification from the department to assist landowners to prevent or control problems caused by wildlife.

"Wildlife interaction" means the negative interaction and the resultant damage between wildlife and commercial crops, commercial livestock, or other property.

AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

WAC 232-36-040 Wildlife/human interaction and conflict resolution for private property damage. The department is the primary source for property owners seeking to determine legal and effective remedies for addressing wildlife interactions. Protection of property using nonlethal techniques is the primary response encouraged by the department. Harassment and/or lethal removal may also be important techniques to protect human safety or to protect property. The following criteria describe the compensation available to protect property that does not qualify under commercial crop or livestock damage:

(1) (~~Unless specifically appropriated by the legislature,~~) Cash compensation will (~~not~~) only be provided to property owners by the department if the funds are appropriated by the legislature or provided through local or federal grants or contracts.

(2) Compensation will be prioritized in the following order:

(a) As conditioned by the legislature or granting entity.

(b) Property prioritization:

(i) Private property that is primarily designed for public use, where there is a human safety risk not addressed by other entities.

(ii) Private property that directly contributes to commercial crop or livestock production.

(iii) Private property used for other business purposes.

(iv) Public property.

(v) Residential property.

(vi) Recreational property.

~~((b))~~ (c) Species prioritization:

(i) Damages caused by wildlife listed as endangered, threatened, sensitive, or categories of concern by the state or federal government.

(ii) Damages caused by big game animals.

(iii) Other federal and state protected species.

(iv) Other wildlife species except unclassified species and predatory birds.

(3) The department may make agreements with private landowners to prevent property damage. These agreements may include the use of:

(a) Best management practices to reduce risk of private property damage;

(b) Scaring or hazing materials;

(c) Fencing materials;

(d) Volunteers referred by the department for hazing, fence repair, etc; and

(e) Lethal removal options.

(4) Private property owners must utilize nonlethal abatement techniques prior to requesting other compensation from the department or before utilizing lethal techniques (~~as outlined in WAC 232-36-050~~).

(a) Use of nonlethal techniques must be documented and consistent with procedures and requirements established by the department.

(b) Evidence of damage (e.g., photographs) must be provided by the property owner.

(c) Property owner must comply with reporting requirements of the department.

(5) Wildlife may not be captured and transported or relocated off the owner's property (parcel where damage occurred) unless:

(a) Authorized by rule of the commission; or

(b) By written permit from the department; and

(c) Owner is in compliance with department rules, permits, and reporting requirements.

(6) The department will establish written procedures for assisting private property owners, using the criteria and priorities provided in this rule. The procedures will include enlistment of partners and volunteers through agreements, permits, and incentives to help mitigate wildlife interactions.

AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

WAC 232-36-051 Killing wildlife causing private property damage. The fish and wildlife commission is authorized to classify wildlife as game, and/or as endangered or protected species, and/or as a predatory bird consistent with RCW 77.08.010 and 77.12.020. The commission is also authorized, pursuant to RCW 77.36.030, to establish the limitations and conditions on killing or trapping wildlife that is causing ~~((property))~~ damage on private property. The department may authorize, pursuant to RCW 77.12.240 the killing of wildlife destroying or injuring property.

The conditions for killing wildlife vary, based primarily on the classification of the wildlife species, the imminent nature of the threat to damage private property, the type of private property damage, and the preventive and nonlethal methods employed by the person prior to the damage event. Additional conditions defined by the department may also be important, depending on individual situations. Killing wildlife to address private property damage is subject to all other state and federal laws including, but not limited to, Titles 77 RCW and 232 WAC.

(1) It is unlawful to kill protected species (as defined in WAC 232-12-011) or endangered species (as defined in WAC 232-12-014) unless authorized by commission rule or with a permit from the department, with the following additional requirements:

(a) Federally listed threatened or endangered species will require federal permits or federal authority, in addition to a state permit.

(b) All migratory birds are federally protected and may require a federal permit or federal authority, in addition to a state permit.

(2) Killing wildlife causing damage to a commercial crop or ~~((commercial))~~ to livestock.

~~((a))~~ It is permissible to kill unclassified wildlife, predatory birds, and ~~((big))~~ game animals that are in the act of damaging commercial crops or livestock, under the following conditions:

~~((i))~~ (a) Predatory birds (defined in RCW 77.08.010 (39)) and unclassified wildlife that are in the act of damaging commercial crops or livestock may be killed with the express permission of the owner at any time on private property, to protect commercial crops or livestock.

~~((ii))~~ (b) An owner with a valid, written damage prevention agreement with the department may kill an individual (one) big game animal while it is in the act of damaging commercial crops; a permit will be provided if authorized in the agreement.

~~((iii))~~ (c) An individual (one) ~~((big))~~ game animal may be killed during the physical act of attacking livestock or domestic animals.

~~((iv))~~ (d) Multiple big game animals may be killed while they are in the act of damaging commercial crops or livestock if the owner is issued a kill permit by the department.

~~((v))~~ (e) A damage prevention agreement or kill permit must include: An approved checklist of the reasonable preventative and nonlethal means that must be employed prior to lethal removal; a description of the properties where lethal

removal is allowed; the species and sex of the animal that may be killed; the terms of the agreement/permit; the dates when lethal removal is authorized; who may kill the animal(s); and other conditions developed within department procedural documents.

~~((b) It is unlawful to kill protected species (as defined in WAC 232-12-011) or endangered species (as defined in WAC 232-12-014) unless authorized by commission rule or with a permit from the department, with the following additional requirements:~~

~~(i) Federally listed threatened or endangered species will require federal permits or federal authority, in addition to a state permit.~~

~~(ii) All migratory birds are federally protected and may require a federal permit or federal authority, in addition to a state permit.~~

~~(2)) (3) Killing wildlife causing damage or killing wildlife to prevent private property damage.~~

~~(a) An individual (one) ~~((big))~~ game animal may be killed during the physical act of attacking ~~((livestock or pets))~~ domestic animals.~~

~~(b) Predatory birds (as defined in RCW 77.08.010(39)), unclassified wildlife, and eastern gray squirrels may be killed with the express permission of the property owner at any time, to prevent private property damage on private real property.~~

~~(c) Subject to subsection ~~((6))~~ (7) of this section, the following list of wildlife species may be killed with the express permission of the owner, when causing damage to private property: Raccoon, fox, bobcat, beaver, muskrat, mink, river otter, weasel, hare, and cottontail rabbits.~~

~~(d) The department may make agreements with landowners to prevent private property damage by wildlife. The agreements may include special hunting season permits such as: Landowner damage prevention permits, spring black bear hunting permits, permits issued through the landowner hunting permit program, kill permits, and Master Hunter permits.~~

~~(e) Landowners are encouraged to allow general season hunters during established hunting seasons on their property to help minimize damage potential and concerns.~~

~~((3)) (4) Wildlife control operators may assist property owners under the conditions of their permit, as established in WAC 232-36-060 and 232-36-065.~~

~~((4)) (5) Tribal members may assist property owners under the conditions of valid comanagement agreements between tribes and the department. Tribes must be in compliance with the agreements including, but not limited to, adhering to reporting requirements and harvest restrictions.~~

~~((5)) (6) Hunting licenses and tags are not required to kill wildlife under this section, unless the killing is pursuant to subsections ~~((2))~~ (3)(c) and (d) of this section. Tribal members operating under subsection ~~((4))~~ (5) of this section are required to meet tribal hunting license, tag, and permit requirements.~~

~~((6)) (7) Except as specifically provided in a permit from the department or a rule of the commission, people taking wildlife under this rule are subject to the laws and rules of the state including, but not limited to, those found in Titles 77 RCW and 220 and 232 WAC.~~

NEW SECTION

WAC 232-36-052 Killing wolves attacking domestic animals. The commission is authorized, pursuant to RCW 77.36.030, to establish the limitations and conditions on killing or trapping wildlife that is causing damage on private property. The department may authorize, pursuant to RCW 77.12.240 the killing of wildlife destroying or injuring property. Killing wildlife to address private property damage is subject to all other state and federal laws including, but not limited to, Titles 77 RCW and 232 WAC.

(1) An owner of domestic animals, the owner's immediate family member, the agent of an owner, or the owner's documented employee may kill one gray wolf (*Canis lupus*) without a permit issued by the director, regardless of its state classification, if the wolf is attacking their domestic animals.

(a) This section applies to the eastern Washington recovery region and those areas of the state that meet or exceed four breeding pairs per recovery region as identified in the state wolf conservation and management plan and does not apply to any area of the state where the gray wolf is listed as endangered or threatened under the federal endangered species act.

(b) Any wolf killed under this authority must be reported to the department within twenty-four hours.

(c) The wolf carcass must be surrendered to the department.

(d) The owner of the domestic animal must grant or assist the department in gaining access to the property where the wolf was killed for the purposes of data collection or incident investigation.

(2) If the department finds that a private citizen killed a gray wolf that was not attacking a domestic animal, or that the killing was not consistent with this rule, then that person may be prosecuted for unlawful taking of endangered wildlife under RCW 77.15.120.

(3) In addition to the provisions of subsection (1) of this section, the director may authorize additional removals by permit under the authority of RCW 77.12.240.

AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

WAC 232-36-060 Director or his/her designee is empowered to grant wildlife control operator certifications. For purposes of training individuals to assist landowners with employing nonlethal management techniques, or to harass, kill, trap, release, and dispatch animals that are causing damage to private property, the director or his/her designee may issue wildlife control operator (WCO) certifications.

(1) To qualify for WCO certification, applicants must:

(a) Be at least eighteen years of age;

(b) Take and complete the department's WCO certification course;

(c) Be certified by the department and have the equipment, knowledge, and ability to control the wildlife species causing conflict or property damage;

(d) Be legally eligible to possess a firearm and without a felony or domestic violence conviction including, but not limited to, convictions under chapter 9.41 RCW, unless firearm possession rights have been restored;

(e) Not have a gross misdemeanor fish and wildlife conviction within the last five years; and

(f) Pay the enrollment fee for each certification training/education. After July 1, 2010, this fee shall be fifty dollars (RCW 77.12.184) per certification.

(2) Once a person is granted WCO certification, he or she must apply for a permit pursuant to WAC 232-36-065 in order to harass, kill, trap, release, or dispatch animals causing damage to private property.

AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

WAC 232-36-110 Application for cash compensation for commercial crop damage—Procedure. Pursuant to this section, the department may distribute money appropriated by the legislature to pay commercial crop damage caused by wild deer or elk in the amount of up to ten thousand dollars per claim, unless following an appeal the department is ordered to pay more (see RCW 77.36.130(2)). The department shall develop claim procedures and application forms consistent with this section for cash compensation of commercial crop damage. Partnerships with other public and private organizations to assist with completion of applications, assessment of damage, and to provide funding for compensation are encouraged.

Filing a claim:

(1) Owners who have worked with the department to prevent deer or elk damage, yet who still experience loss and meet eligibility requirements, may file a claim for cash compensation.

(2) The claimant must notify the department within seventy-two hours of discovery of crop damage and at least seventy-two hours prior to harvest of the claimed crop.

(3) A complete, written claim must be submitted to the department within sixty days of when the damage stops.

(4) Owners may only file one claim per year. Multiple partners in a farming operation are considered one owner. Operations involving multiple partners must designate a "primary grower" to receive payment from the department.

(5) The claim form declaration must be signed, affirming that the information provided is factual and truthful per the certification set out in RCW 9A.72.085, before the department will process the claim.

(6) In addition to a completed claim form, an applicant must provide:

(a) A copy of applicant's Schedule F of Form 1040, Form 1120, or other applicable forms filed with the Internal Revenue Service indicating the applicant's gross sales or harvested value of commercial crops for the previous tax year.

(b) The assessment method used consistent with WAC 232-36-120, valuation of property damage.

(c) Applicant must provide proof of ownership of claimed commercial crops or contractual lease of claimed commercial crops consistent with department procedural requirements for submission of documents.

(d) Written documentation of approved methodology used to assess and determine final crop loss and value.

(e) Applicant must provide records documenting average yield on claimed crop and parcel, certified yield reports, pro-

duction reports and weight certificates completed at the time weighed for claimed year, and other applicable documents that support yield loss and current market price. Current market price will be determined less transportation and cleaning costs when applicable.

(f) Declaration signed under penalty of perjury as provided in RCW 9A.72.085, indicating that the applicant is eligible for the claim, meets eligibility requirements listed under this section, and that all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate.

(g) Copy of the insurance policy and payment on the commercial crop where loss is claimed.

(h) Copy of application for other sources of loss compensation and any payment or denial documentation.

Damage claim assessment:

(7) Damage claim assessment of amount and value of commercial crop loss is the primary responsibility of the claimant. A crop damage evaluation and assessment must be conducted by a licensed crop insurance adjuster:

(a) The owner must submit a damage claim assessment prepared by a crop insurance adjuster licensed by the state of Washington and certified by the federal crop insurance service.

(b) The department will provide the claimant with a list of approved adjustors. The owner must select an adjustor from the approved list and arrange for the completion of a crop damage assessment. Adjustor fees will be the ~~((shared))~~ responsibility of the ~~((owner and the))~~ department.

(c) The department or the owner may accept the damage claim assessment provided by the licensed adjuster or may hire a state licensed adjustor of their choosing and conduct a separate assessment or evaluation of the crop loss amount and value. The party hiring an adjustor to conduct a separate assessment or evaluation is responsible for payment of all fees.

(8) Disagreement between the claimant and the department over the crop loss value may be settled through an adjudicative proceeding.

Settlement of claims:

(9) ~~((Subject to money appropriated to pay commercial crop damage, undisputed claims will be paid, less one-half of the crop adjustor's fee or a maximum of six hundred dollars for the owner's share of the crop adjustor's fee.))~~ The crop adjustor's fee is not subject to the ten thousand dollar payment limit per owner.

(10) Compensation paid by the department, in addition to any other compensation received by the claimant, may not exceed the total value of the assessed crop loss.

(11) The owner will be notified by the department upon completion of the evaluation and has sixty days to accept or appeal the department's offer for settlement of the claim, or the claim is considered satisfied and not subject to appeal.

(12) The department shall prioritize payment for commercial crop damage in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for commercial crop damage during the ~~((first))~~ current fiscal year ~~((of a biennium))~~, the claim shall be held over until the following fiscal year when funds become available. Claims that are carried over will take

first priority and receive payment before any new claims are paid. ~~((Claims will not be carried from one biennium to the next.))~~

AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

WAC 232-36-200 Payment for ~~((commercial))~~ livestock damage and other domestic animals—Limitations. Owners who have worked with the department to prevent depredation but continue to experience losses, or who experience unforeseen losses, may be eligible to file a damage claim and receive cash compensation. Cash compensation will only be provided to livestock owners by the department when specifically appropriated by the legislature or other funding entity. Damages payable under this section are limited to the lost or diminished value of commercial livestock caused by wild bears, cougars, or wolves and shall be paid only to the owner of the livestock, without assignment. Cash compensation for livestock losses from bears, cougars, and wolves shall not include damage to other real or personal property, including other vegetation or animals, consequential damages, or any other damages ~~((including))~~ except veterinarian services may be eligible. However, livestock owners under written agreement with the department will be compensated consistent with their agreement which may extend beyond the limitations in this section. The department is authorized to pay ~~((up to two hundred dollars per sheep and one thousand five hundred dollars per head of cattle or per horse))~~ the market value for the domestic animal lost, the market value of reduced weight gains, and no more than ten thousand dollars to the commercial livestock owner per claim.

Claims for cash compensation will be denied when:

(1) Funds for livestock compensation have not been specifically appropriated by the legislature or other funding entity;

(2) The claim is for livestock other than sheep, cattle, or horses, when only state funds are available; or any domestic animals not allowed by the funding entity;

(3) ~~((The owner of the commercial livestock does not meet the definition of "eligible farmer" in RCW 82.08.855 (4)(b)(i) through (iv);~~

~~((4) The loss estimate is less than five hundred dollars;~~

~~((5))~~ The owner fails to provide the department with an approved checklist of the preventative and nonlethal means that have been employed, or the owner failed to comply with the terms and conditions of his or her agreement(s) with the department;

~~((6))~~ (4) The owner has accepted noncash compensation to offset livestock losses in lieu of cash. Acceptance of noncash compensation will constitute full and final payment for livestock losses within a fiscal year;

~~((7))~~ (5) Damages to the ~~((commercial))~~ livestock or other domestic animals claimed are covered by insurance or are eligible for payment from other entities. However, any portion of the damage not covered by others is eligible for filing a claim with the department;

~~((8))~~ (6) The owner fails to provide on-site access to the department or designee for inspection and investigation of alleged attack or to verify eligibility for claim;

~~((9))~~ (7) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within this chapter;

~~((10))~~ (8) No claim will be processed if the owner fails to sign a statement affirming that the facts and supporting documents are truthful to the best of the owner's knowledge;

~~((11))~~ (9) The owner or designee has salvaged or rendered the carcass or allowed it to be scavenged without an investigation completed under the direction of the department; or

~~((12))~~ (10) The department has expended all funds appropriated for payment of such claims for the current fiscal year.

AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

WAC 232-36-210 Application for cash compensation for ~~((commercial))~~ livestock damage or other domestic animal—Procedure. Pursuant to this section, the department may distribute money specifically appropriated by the legislature or other funding entity to pay commercial livestock losses caused by wild bear, cougar, or wolves in the amount of up to ten thousand dollars per claim unless, following an appeal, the department is ordered to pay more (see RCW 77.36.130(2)). The department will develop claim procedures and application forms consistent with this section for cash compensation of ~~((commercial))~~ livestock or other domestic animal losses. Partnerships with other public and private organizations to assist with completion of applications, assessment of losses, and to provide funding for compensation are encouraged.

Filing a claim:

(1) Owners who have worked with the department to prevent livestock depredation, yet who still experience loss or losses that occur under emergent situations, may file a claim for cash compensation if they meet eligibility requirements.

(2) Claimant must notify the department within twenty-four hours of discovery of livestock or other domestic animal attack.

(3) Damage claim assessment of amount and value of ~~((commercial livestock))~~ domestic animal loss is the primary responsibility of the claimant.

(4) ~~((Assessment))~~ Investigation of the loss and review and approval of the assessment will be conducted by the department:

(a) The owner must provide access to department staff or designees to investigate the cause of death or injury to ~~((livestock))~~ domestic animals and use reasonable measures to protect evidence at the depredation site.

(b) Federal officials may be responsible for the investigation when it is suspected that the attack was by a federally listed species.

(5) Claimant must request a damage claim application within ten days of a loss.

(6) A complete, written claim must be submitted to the department within sixty days of an attack on ~~((commercial livestock))~~ domestic animals.

(7) The claim form declaration must be signed, affirming that the information provided is factual and truthful, before the department will process a claim.

(8) In addition to a completed claim form, an applicant must provide:

(a) ~~((A copy of applicant's Schedule F of Form 1040, Form 1120, or other applicable forms filed with the Internal Revenue Service indicating the applicant's gross sales or value of commercial livestock for the previous tax year.~~

~~((b))~~ Claimant must provide proof of legal ownership or contractual lease of claimed livestock.

~~((c))~~ (b) Claimant must provide records documenting ~~((livestock))~~ the value of the domestic animal based on current market price.

~~((d))~~ (c) Declaration signed under penalty of perjury indicating that the applicant is eligible for the claim, meets eligibility requirements listed under this ~~((section))~~ chapter, and all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate.

~~((e))~~ (d) Copy of any insurance policy covering ~~((livestock))~~ loss claimed.

~~((f))~~ (e) Copy of application for other sources of loss compensation and any payment or denial documentation.

Settlement of claims:

(9) Subject to money appropriated to pay for ~~((commercial livestock))~~ domestic animal losses, undisputed claims will be paid up to ten thousand dollars.

(10) Valuation of the lost livestock will be determined by the market at the time the animals would normally be sold. Livestock will be valued based on the average weight of herd mates at the time of sale multiplied by the cash market price received; depredated cows or ewes will be replaced based on the value of a bred animal of the same age and type as the one lost, and bulls will be replaced using actual purchase price prorated based on a four-year depreciation cycle minus salvage value. The department may utilize the services of a certified livestock appraiser to assist in the evaluation of livestock claims.

(11) Claims for higher than normal livestock losses, reduced weight gains, or reduced pregnancy rates must include:

(a) At least three years of records prior to the year of the claim;

(b) The losses must occur on large open range pastures where regular monitoring of livestock is impractical (and therefore discovery of carcasses infeasible) as determined by the department;

(c) Verification by the department that wolves are occupying the range;

(d) The losses cannot be reasonably explained by other causes; and

(e) Claims will be assessed for losses in excess of the previous three year running average.

(12) Compensation paid by the department, in addition to any other compensation, may not exceed the total value of the assessed ~~((livestock))~~ loss.

~~((11))~~ (13) Upon completion of the evaluation, the department will notify the owner of its decision to either deny the claim or make a settlement offer (order). The owner has sixty days from the date received to accept the department's offer for settlement of the claim or to submit an appeal of the order. The response must be in writing and the signed document may be mailed or submitted by fax or e-mail. If no written acceptance or request for appeal is received, the offer is considered rejected and not subject to appeal.

~~((12))~~ (14) The department will prioritize payment for commercial livestock losses in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for commercial livestock losses during the ~~((first))~~ current fiscal year ~~((of a biennium))~~, the claim shall be held over until the following fiscal year when funds become available. Claims that are carried over will take first priority and receive payment before any new claims are paid. ~~((Claims will not be carried from one biennium to the next.))~~

AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

WAC 232-36-400 Commercial crop or livestock damage claim—Dispute resolution. For claims where the owner has met all claim eligibility criteria and procedures, but ultimately rejects the written settlement offer (order) for crop or livestock loss and/or value assessment, the provisions of this section shall apply:

Informal resolution:

(1) If the owner rejects the property loss or value assessment and would like to discuss a negotiated settlement, he or she can request a meeting by notifying the department in writing within ten days of receiving the settlement offer or claim denial (order).

(2) A department representative and the owner or designee(s) will meet and attempt to come to mutual resolution.

(3) A livestock appeals committee may be established with a minimum of three citizen members appointed by ~~((statewide livestock organization(s)))~~ the department, a representative from the department of fish and wildlife, and a representative from the department of agriculture to review and recommend a settlement if requested by the claimant or the department.

(4) Monetary compensation or noncash compensation, mutually agreed upon by both the department and owner, shall be binding and constitute full and final payment for claim.

(5) If parties cannot agree upon damages, or the owner wishes to appeal the claim denial or the department's settlement offer (order), the owner may request an adjudicative proceeding consistent with chapter 34.05 RCW within sixty days of receiving a copy of the department's decision.

(6) The request must comply with the following:

(a) The request must be in writing, and the signed document may be mailed or submitted by fax or e-mail;

(b) It must clearly identify the order being contested (or attach a copy of the order);

(c) It must state the grounds on which the order is being contested and include the specific facts of the order that are relevant to the appeal; and

(d) The request must identify the relief being requested from the proceeding (e.g., modifying specific provisions of the order).

(7) The proceeding may only result in the reversal or modification of an order when the preponderance of evidence shows:

(a) The order was not authorized by law or rule;

(b) A fact stated in the order is not supported by substantial evidence;

(c) The award amount offered is inconsistent with applicable procedures; or

(d) Material evidence was made available by the owner at the time of the damage assessment, but was not considered in the order.

(8) The burden of proof is on the appellant (owner) to show that he or she is eligible for a claim and that the damage assessment is reliable (see RCW 77.36.130(4)).

(9) Findings of the hearings officer are subject to the annual funding limits appropriated by the legislature and payment rules (WAC 232-36-110(12), 232-36-210(9), and 232-36-260) of the commission.

WSR 13-13-086

PROPOSED RULES

CHARTER SCHOOL COMMISSION

[Filed June 19, 2013, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-089.

Title of Rule and Other Identifying Information: Title 108 WAC, Charter school commission; chapter 108-10 WAC, Introduction; chapter 108-20 WAC, Application; and chapter 108-30 WAC, Performance framework.

Hearing Location(s): Tacoma Public Schools, Central Administration Building, 601 South 8th Street, Tacoma, WA 98405, on Tuesday, July 30, 2013, at 10:15 a.m. - 11:15 a.m.

Date of Intended Adoption: Thursday, August 22, 2013.

Submit Written Comments to: RaShelle Davis, P.O. Box 43113, Olympia, WA 98504, e-mail rashelle.davis@gov.wa, by Monday, August 19, 2013.

Assistance for Persons with Disabilities: Contact RaShelle Davis by Monday, August 19, 2013, (360) 902-0551.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to establish the charter school application process, outline the content required for charter school applications, define the charter school application approval criteria, and develop the performance framework for charter school oversight and evaluation.

Reasons Supporting Proposal: The charter school commission must publish its rules and criteria regarding the application process, approval process, and the performance framework so that the public and potential applicants have adequate notice.

Statutory Authority for Adoption: RCW 28A.710.070.

Statute Being Implemented: Chapter 28A.710 RCW.

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

Name of Proponent: Charter school commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: RaShelle Davis, P.O. Box 43113, Olympia, WA 98504, (360) 902-0551.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement or school district fiscal impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not provide material change to the Washington state statute and are therefore exempt from the cost-benefit analysis.

Wednesday, June 19, 2013
RaShelle Davis
Policy Advisor

Title 108 WAC

CHARTER SCHOOL COMMISSION

Chapter 108-10 WAC

INTRODUCTION

NEW SECTION

WAC 108-10-010 Purpose. The purpose of this title is to establish the charter school application process, outline the content required for charter school applications, define the charter school application approval criteria, and develop the performance framework for charter school oversight and evaluation.

NEW SECTION

WAC 108-10-020 Authority. Authority for this title is RCW 28A.710.070, which establishes the Washington charter school commission as an independent state agency whose mission is to authorize high-quality public charter schools throughout the state and to ensure the highest standards of accountability and oversight for these schools.

NEW SECTION

WAC 108-10-030 Definitions. The definitions in this section apply throughout this title unless the context clearly requires otherwise.

"Applicant" means a nonprofit corporation that has submitted an application to an authorizer. The nonprofit corporation must be either a public benefit nonprofit corporation as defined in RCW 24.03.490, or a nonprofit corporation as defined in RCW 24.03.005 that has applied for tax exempt status under section 501 (c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501 (c)(3)). The nonprofit corporation may not be a sectarian or religious organization and must

meet all of the requirements for a public benefit nonprofit corporation before receiving any funding under RCW 28A.710.220.

"At risk of dropping out of high school" means a student who meets one or more of the following factors: (1) Receives poor grades in core subjects, such as Math or English; (2) possesses low attendance rates; (3) fails to be promoted to the next grade, especially during the transition grade of ninth grade; (4) is continuously disengaged or unmotivated in the classroom; (5) students with higher than average disciplinary sanctions; and/or (6) other indicators supported by peer review research.

"At-risk student" means a student who has an academic or economic disadvantage that requires assistance or special services to succeed in educational programs. The term includes, but is not limited to, students who do not meet minimum standards of academic proficiency, students who are at risk of dropping out of high school, students in chronically low-performing schools, students with higher than average disciplinary sanctions, students with lower participation rates in advanced or gifted programs, students who are limited in English proficiency, students who are members of economically disadvantaged families, and students who are identified as having special educational needs.

"Business days" means the days of the week, Monday through Friday.

"Commission" means the Washington state charter school commission, its staff, or its delegee(s).

"Economic disadvantage" means demonstrating financial hardship such as receiving free or reduced lunch, or below two hundred percent of the federal poverty level.

"Online platform" means the online process as explained in Part I of this title that applicants use to complete and submit the application electronically.

Chapter 108-20 WAC

APPLICATION

PART I

CHARTER SCHOOL APPLICATION PROCESS

NEW SECTION

WAC 108-20-010 Charter school application process information. (1) Information regarding the charter school application process shall be made available on the commission's web page. The information made available on the web page will include at a minimum: A timeline for the application process, a list of required application materials, the scoring rubric used by evaluators, and the contact information for the commission's staff. General questions regarding the application process may be directed to the commission's staff.

(2) The commission may make available an in-person or online orientation session to provide an overview of the charter school application process, content required in the application, and the online platform.

NEW SECTION

WAC 108-20-020 Notice of intent. (1) An applicant seeking approval must submit an electronic or hard copy non-binding notice of intent not less than thirty days before the last date for submission of an application to the commission.

(2) The electronic copy of the notice of intent must be received via e-mail by 5:00 p.m. Pacific time not less than thirty days before the last date for submission of an application to the commission.

(3) The hard copy must be:

(a) Postmarked not less than thirty days before the last date for submission of an application to the commission; or

(b) Hand delivered before the close of business not less than thirty days before the last date for submission of an application to the commission.

(4) Within two business days of receipt of the notice of intent, the commission will send e-mail confirmation that the notice of intent has been received.

NEW SECTION

WAC 108-20-030 Application submission. (1) All applications, whether for an original charter, a modification of a charter, or the renewal of a charter shall be made on forms approved by the commission or through the online platform.

(2) An electronic version of the application through the online platform must be received by the commission by the application deadline in order for the application to be considered.

(3) After receipt of the electronic application, the commission or its designee will review the application for completeness. If the review reveals that information is missing, the applicant will be contacted and granted twenty-four hours to provide the missing information.

(4)(a) Once an application is deemed complete, the applicant will be notified via e-mail and will be required to submit ten hard copies of the application. The hard copies of the application shall be identical in all respects to the content found in the application submitted through the online platform.

(b) The applicant will have seven business days to submit the ten hard copies of the application either in person or through the United States Postal Service. In-person delivery will be due by 5:00 p.m. Pacific time on the fifth business day. Mailed applications must be postmarked by the fifth business day.

(5) An application will be considered ready for evaluation when all questions on the application are answered and all documentation required by the application or subsequently requested by the commission is received. Incomplete applications, or applications received after the deadline, will not be considered for evaluation.

NEW SECTION

WAC 108-20-040 Applicant interview. Applicants are required to participate in an interview following submission of a complete application. The interview is used as an evaluative tool for the evaluators to ask questions, seek clarification,

and gain additional information regarding the application. The interview is taken into consideration with the application and will be used in the final recommendations made by the evaluators. Applicants will be given a notice of at least five business days before the scheduled interview date.

NEW SECTION

WAC 108-20-050 Public forum. Applicants are required to participate in a public forum with the commission. The public forum will be an opportunity for the applicant to engage directly with the commission and for the public to learn about and provide comment regarding the applicant. The public forum is independent of the application process and may be used to evaluate the applicant. Applicants will be given a notice of at least five business days before the scheduled public forum date.

NEW SECTION

WAC 108-20-060 Application evaluators. The commission, its designee(s), or a combination thereof will participate in the evaluation process. Should the commission designate external evaluators, the designees must be qualified and independent, and disclose any conflict(s) of interest. The application evaluators will make a recommendation to the commission regarding the applications reviewed. The commission reserves its right to make final decisions regarding the approval and denial of charter school applications.

PART II**APPLICATION CONTENT AND APPROVAL CRITERIA**NEW SECTION

WAC 108-20-070 Criteria used for application evaluation. The commission will grant approval only to charter school applicants that are able to demonstrate the capacity to successfully execute all elements of the educational, operational, financial, and governance plan. The charter school applications must demonstrate the applicants' competence in each of the components listed in RCW 28A.710.130 as well as any other requirements in chapter 28A.710 RCW and those outlined below in this section. The approval criteria include:

(1) An executive summary that outlines the school's mission and vision, target student population and community, location or geographic area for the proposed school and the school district where it will be located, the educational need and anticipated student population, the education plan/school design, leadership and governance, enrollment summary, a brief description of the plan for the school, and an explanation of how the applicant will successfully open and operate a high-quality school with direct links to the plan and resources; community engagement, evidence of need, and parent and community support for the proposed charter school.

(2) A high-quality educational program design and capacity that addresses the following elements:

(a) A curriculum and instructional design framework that reflects the needs of the anticipated population and ensures all students will meet or exceed the state standard. This includes:

(i) A description of the basic learning environment (e.g., classroom-based, independent study), class size, classroom management, and structure.

(ii) An overview of the planned curriculum including a sample course scope and sequence for one subject for each division (elementary, middle, high school) the school would serve. In addition, identified course outcomes and demonstrated alignment with applicable state standards.

(iii) Evidence that the educational program is based on proven methods; evidence that the proposed educational program has a sound base in research, theory, and/or experience, and has been or is likely to be rigorous, engaging, and effective for the anticipated student population.

(iv) If the curricular content is developed, a summarized description of content choices such as text book selection, by subject, and rationale. The applicant must provide evidence that this curricular content will be appropriate and effective for the targeted students as well as adhere to the state curricular requirements.

(v) If the curricular content is not developed, a plan for how the content will be developed between approval of the application and the opening of the school, including who will be responsible and when key stages will be completed.

(vi) A description of the primary teaching methods and instructional strategies that the school will expect teachers to use and why the strategies are well-suited for the anticipated student population.

(b) A description of student performance standards for the school as a whole. If the applicant plans to adopt or develop additional academic standards beyond the state and authorizer standards, an explanation of the types of standards (content areas, grade levels). The applicant must also explain the policies and standards for promoting students from one grade to the next.

(c) A detailed explanation of high school graduation requirements including, but not limited to: A description of the process of earning credit hours, calculating grade point averages, and what information will be available on transcripts, and elective courses offered; explanations of additional requirements that exceed state and authorizer standards; explanations of how these requirements ensure student readiness for college or post secondary opportunities; and an explanation of the systems and structures used for students at risk of dropping out and/or not meeting graduation requirements.

(d) An outline of the school calendar and schedule including, but not limited to: An explanation of how the calendar meets the needs of the school's educational program; the structure of the school day and week, including number of instructional hours/minutes in a day for core subjects; the length of the school day (start/dismissal times); and the minimum number of hours/minutes devoted to academic instruction in each grade.

(e) A description of the school culture including, but not limited to: A description of the culture or ethos of the proposed school; an explanation of how it will promote a posi-

tive academic environment and reinforce student intellectual and social development; the process of implementation of this culture among students and staff; and an explanation of how the school culture will serve students with special needs.

(f) An overview of supplemental programming including, but not limited to: Summer school offerings including the schedule, length, and anticipated participants; resource and staffing needs; extra-curricular or cocurricular activities offerings and how they will be funded; programs addressing student mental, emotional, and social development and health; and other student-focused activities and programs integral to the educational and student development plans.

(g) Special populations and at-risk students includes, but is not limited to: A description of the overall plan to serve students with special needs; a description of more specific plans identifying how the school will meet the students' learning needs in the least restrictive environment possible as defined by state and federal special education guidelines and law; how the school will meet the needs of students who do not meet minimum standards of academic proficiency, students who are at risk of dropping out of high school, students in chronically low-performing schools, students with higher than average disciplinary sanctions, students with lower participation rates in advanced or gifted programs, students who are limited in English proficiency, students who are members of economically disadvantaged families; how the school will meet the needs of highly capable students; and how the school will comply with applicable laws and regulations governing services to these student populations.

(h) A culturally inclusive student recruitment and enrollment plan that includes, but is not limited to: An enrollment policy; plans for student recruitment and marketing that will provide equal access; and plans for outreach to families of targeted at-risk students.

(i) Evidence that the proposed discipline plan has a sound base in, and some combination of, research, theory, experience, and best practice; and has an explanation of how it is likely to be effective for the anticipated student population. The discipline policy must be culturally responsive and comply with applicable state laws and authorizer policies which includes, but is not limited to: Equitable and fair practices with incentives to promote good discipline; penalties for infractions; types of offenses; rights of students with disabilities in disciplinary actions and proceedings; procedures for due process when a student is suspended or expelled; and how students and parents will be informed of the discipline policy.

(j) Conversion schools. Proposed conversion schools must provide a detailed plan for how they intend to engage the entire school community and any information regarding steps already taken; additionally a detailed plan that demonstrates that the conversion school will have sufficient capacity to enroll all students who wish to remain enrolled in the school after conversion; demonstrated support for the proposed conversion by a petition signed by a majority of teachers assigned to the school or a petition signed by a majority of parents of students in the school; a description of the organization's prior experience in taking over or turning around an underperforming school; and specific ways it will engage and transform the existing school culture.

(k) Education program capacity includes, but is not limited to: The identification of key members of the school's leadership team who will play a substantial role in school development and its success; the key members' qualifications to implement school design; identification and descriptions of organizations, agencies, or consultants that are partners in planning and establishing the school; the identification of the principal/head of school candidate and why this individual is well qualified to lead the school in achieving its mission (if no candidate identified, a description of the job and its qualifications, timeline, criteria, recruiting and selection process); a description of the responsibilities and qualifications of the school's leadership/management team beyond the principal/head of school; and who will be working full time, or nearly full time, to lead development of the school, and the plan to compensate them.

(l) The school's plan for using internal and external assessments to measure and report student progress.

(3) Operations plan and capacity. A detailed plan and supporting information addressing the school's operations plan and capacity including the following elements:

(a) A detailed description of the school's governance includes, but is not limited to: Legal status and governing documents; organization charts that show the school governance, management, and staffing structure in the school's first year and at full build-out, and the roles and responsibilities of the governing board, staff, any related bodies, and any external organizations playing a role in the school's management; regarding the governing board, an explanation of the governance philosophy guiding the board; a description of the governance structure; a list of current and identified board members and their intended roles, including their interests in and qualification for serving the school's board as well as background information on the identified or proposed governing board members and proposed school leadership and management team; if there is no initial governing board, an explanation of how and when the transition to the formal governing board will take place; the procedure by which board members have been and will be selected and how frequently they will meet; a description of the board's ethical standards and procedures for identifying and addressing conflicts of interests; plans for increasing the capacity of the governing board; advisory bodies and the roles and duties of those bodies; and a description of the school's grievance process should a student or parent have an objection to the governing board policy or decision, administrative procedure, or practice at the school.

(b) An explanation of any proposed partnership agreement between a charter school and the school district or educational service district (ESD) in which it resides and a description of the terms of that agreement.

(c) Explanations of any other partnerships or contractual relationships central to the school's operations or mission; in the case of an application where the proposed charter school intends to contract with a nonprofit education service provider (ESP) for substantial educational services, management services, or both, the applicant must:

(i) Provide evidence of the nonprofit ESP's success in serving student populations similar to the targeted population, including demonstrated academic achievement as well

as successful management of nonacademic school functions if applicable;

(ii) Provide a term sheet setting forth the proposed duration of the service contract; roles and responsibilities of the governing board, the school staff, and the ESP; scope of services and resources to be provided by the service provider; performance evaluation measures and timelines; compensation structure, including clear identification of all fees to be paid to the service provider; methods of contract oversight and enforcement; investment disclosure; and conditions for renewal and termination of the contract; and

(iii) Disclose and explain any existing or potential conflicts of interest between the charter school board and proposed service provider or any affiliated business entities.

(d) A detailed description of the school's staffing includes, but is not limited to: Staff structure; staffing plans for the first year and for the term of the charter, hiring, management, and evaluation; professional development; and performance management.

(e) A detailed description of the school's facilities includes, but is not limited to: Facilities requirements for school plan; specialty classroom needs; administrative and support needs; facilities essential to fulfillment of athletic program; playground; common space for assemblies and large group meetings; existing public or nonpublic facilities; independent facilities; process for identifying and securing a facility; a detailed facility start-up plan including backup or contingency plans, if appropriate. For a conversion school, the applicant must supply evidence that it has notified the encompassing school district of the conversion.

(f) Start-up and ongoing operations include, but are not limited to: A detailed start-up plan for the school specifying tasks, timelines, and responsible individuals; transportation plan; food service plan; plans for all other significant operational or ancillary services; plan for safety and security for students, the facility, and property; description of types and levels of insurance coverage.

(g) A detailed description of the school's operations capacity includes, but is not limited to: Individual and collective qualifications for successfully implementing operations plan with specific emphasis on staffing, performance management, professional development, general operations, and facilities management; organization's capacity and experience in facilities acquisition and management.

(4) Financial plan. A detailed description of the school's financial plan and capacity includes, but is not limited to:

(a) A description of the systems, policies, and procedures the school will use for financial planning, accounting, purchasing, and payroll, including a description of internal controls and methods for ensuring compliance with all financial reporting requirements; roles and responsibilities of administration and governing board for school finances; plans and procedures for annual audit of financial and administrative operations; methods for ensuring financial transparency; liability insurance plans with ability to indemnify the school, its board, staff, and teachers against tort claims; completion of a budget form and financial plan workbook; a detailed description of assumptions, estimates, and bases for revenue projections, staffing levels, and costs. This includes start-up and

five-year cash flow projections and budgets with clearly stated assumptions.

(b) Financial management capacity. A detailed description of the school's financial management capacity includes, but is not limited to: Individual and collective qualifications for successfully implementing the financial plan which includes, at a minimum, financial management, fund-raising and development, and accounting and internal controls.

(5) School specific performance measures. A detailed description of the school's specific performance measures includes, but is not limited to, the following mission-specific items: Educational goals and targets; organizational goals and targets; nonmandatory assessments or measures for evaluating student learning needs and progression within the school year; training and support school leadership and teachers will receive in analyzing, interpreting, and using performance data to improve student learning.

(6) For existing charter school operators, charter management organizations or educational management organizations, a detailed description of the organization's growth plans and capacity to successfully support and execute that plan.

(7) Conflict of interest. Conflict of interest includes, but is not limited to: Full disclosure of all real or apparent conflicts of interest between reviewers, decision makers, applicants, and any affiliates of these entities.

(8) Background checks. The safety and welfare of the students in Washington's charter schools is of the utmost importance, as is the protection of scarce state resources being entrusted to charter schools. Therefore, application evaluation will include the following background check components:

(a) Each identified or proposed governing board member, and identified or proposed school leadership and management, must complete a background check disclosure form, waiver, and certification which will include disclosure of, at a minimum, criminal background information in accordance with enumerated questions and as aligned with RCW 28A.400.303 and the statutes cited therein. This will also require specific disclosure of financial mismanagement or malfeasance.

(b) The commission may also complete an independent background and/or records check on each identified or proposed governing board member, and identified or proposed school leadership and management.

(c) Individuals will not be permitted to serve on the governing board, administration, or leadership of a charter school if the results of their records check would legally preclude them from working in a school.

(d) Individuals may not be permitted to serve on the governing board, administration, or leadership of a charter school if they have a history of financial malfeasance or mismanagement.

(9) Misrepresentations on application. In the event that an applicant makes material misrepresentations in the information and documentation submitted as part of this application process, the application may be denied.

NEW SECTION

WAC 108-20-080 Ratings. The application and all associated documents and evidence will be rated using the following criteria: Exceeds the standard; meets the standard; partially meets the standard; or does not meet the standard. The application will also be evaluated to determine whether the school is designed to serve at-risk students, and whether each component aligns with the overall mission, budget, and goals stated throughout the application and supporting documents.

NEW SECTION

WAC 108-20-090 Approval or denial of an application. (1) After evaluation of the application and supporting documents, interview, and other documented evidence received through the application review process, including public input received by the commission, the commission will determine whether to approve, approve with conditions, or deny an application. Preference will be given to applications for charter schools designed to serve at-risk student populations.

(2) Conditions that must be satisfied when an application is conditionally approved will be memorialized in the charter contract. Failure to satisfy those conditions will negate approval.

(3) Reasons for denial of an application will be clearly stated in writing.

Chapter 108-30 WAC

PERFORMANCE FRAMEWORK

CHARTER SCHOOL PERFORMANCE FRAMEWORK

NEW SECTION

WAC 108-30-010 Performance framework policy statement. The commission will evaluate charter school performance using a performance framework designed to ensure that charter schools are held to the highest standards of accountability and oversight. The performance framework allows for the application of rigorous standards and metrics to evaluate the performance of each charter school.

NEW SECTION

WAC 108-30-020 Performance framework. (1) "Performance framework" means the standards that will be used by the commission to evaluate the performance of each charter school. The performance framework will be a source of information used by the commission to make decisions involving corrective action, renewal, modification, revocation, and/or termination of a charter school.

(2) The performance framework evaluates charter school performance and compliance in the areas of academic, financial, organizational, legal and mission specific performance and compliance. The commission will develop and post per-

formance framework guidance for charter schools on the commission web site.

(3) Academic performance and compliance. Academic performance and compliance measures whether the charter school meets or is making sufficient progress towards academic performance expectations. Academic performance and compliance includes, but is not limited to:

(a) Student achievement. Evaluation of student achievement includes evaluation of student academic proficiency in English language arts and literacy in history/social studies/civic education, science and technical subjects, and mathematics; advanced proficiency measurements in English language arts and literacy in history/social studies/civic education, science and technical subjects, and mathematics; evaluation of student achievement gaps in both proficiency and growth. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(b) Comparative performance. Evaluation of comparative performance includes comparison of charter school to district-of-residence performance in English language arts and literacy in history/social studies/civic education, science and technical subjects, and mathematics; comparison of charter school to peer or similar school performance in English language arts and literacy in history/social studies/civic education and science and technical subjects, and mathematics. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(c) Student progress. Evaluation of student progress includes evaluation of growth based on the school's median student growth percentile in English language arts and literacy in history/social studies/civic education, science and technical subjects, and mathematics. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(d) Post secondary readiness (high school evaluation). Evaluation of post secondary readiness includes evaluation of students' performance and participation on American College Testing (ACT) or Scholastic Assessment Test (SAT); overall graduation rates; comparison of charter school to district-of-residence graduation rates; comparison of charter school to peer or similar school graduation rates; enrollment in post secondary institutions within six months of graduation; enrollment in post secondary institutions within eighteen months of graduation. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(e) State and federal accountability. Evaluation of the charter school's compliance with state and federal accountability rules, regulations, and laws and whether the school has met the targets set forth by the state accountability system including, but not limited to, provision of basic education,

instruction in the essential academic learning requirements, statewide student assessments, performance improvement goals. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(f) Mission specific accountability. Evaluation of whether the charter school has met mission specific goals identified in its contract.

(4) Financial performance and compliance. Financial performance and compliance measures the financial health and viability of a charter school. Financial performance and compliance includes, but is not limited to:

(a) Near term indicators. Evaluation of financial performance and compliance includes evaluation of charter school's assets and liabilities, available cash; actual enrollment as compared to enrollment projection and associated budget; loan and grant status.

(b) Sustainability indicators. Evaluation of sustainability indicators includes evaluation of net income and revenue; debt to asset ratio; cash flow; debt service ratio.

(c) Audit and accounting indicators. Evaluation of audit and accounting indicators includes evaluation of the charter school's compliance with generally accepted accounting principles; audit results and findings, if any.

(5) Organizational performance and compliance. Organizational performance and compliance measures compliance with specific terms and provisions of the charter contract and state and federal legal requirements. Organizational performance and compliance includes, but is not limited to:

(a) Education program. Evaluation of the education program includes evaluation of the charter school's education program in terms of compliance with specific performance expectations set forth in the charter contract; compliance with requirements of local education agencies and public schools under those federal laws and regulations including, but not limited to, compliance with the Individuals With Disabilities Education Act, the Rehabilitation Act, the Federal Educational Rights Privacy Act, the Elementary And Secondary Education Act, McKinney-Vento Act, and any other applicable education laws or regulations.

(b) Charter school law compliance. Evaluation of charter school law compliance includes evaluation of the charter school's compliance with chapter 28A.710 RCW. This includes review of policies and practices related to admissions, waiting lists, recruitment, security and privacy.

(c) Safety and welfare compliance. Evaluation of student and employee compliance includes evaluation of the charter school's compliance with laws concerning employment of faculty and staff including, but not limited to, certification requirements and background checks; evaluation of student and employee disciplinary policies and procedures and application of associated legal and constitutional protections; evaluation of compliance with health and safety laws and regulations.

(d) Board performance and stewardship. Evaluation of board performance and stewardship will include evaluation of compliance with all applicable laws, rules, and terms of the charter contract as well as willingness and skill in taking corrective action as required.

(e) Student involvement and retention. Evaluation of student involvement and retention will include evaluation of attendance and recurrent enrollment.

(f) Mission specific accountability. Evaluation of whether the charter school has met mission specific goals identified in its contract including, but not limited to, proactive public engagement in student recruitment and demonstrated execution of a mission appropriate enrollment plan.

(6) Other. The commission may also include additional rigorous, valid, and reliable indicators to augment evaluations of the charter school's performance.

NEW SECTION

WAC 108-30-030 Rating categories. Unless otherwise deemed appropriate, academic measures will be rated using the following categories: Exceeds standard; meets standard; does not meet standard; falls far below standard. Financial and organizational measures will be rated using the following categories: Meets standard or does not meet standard. Each of these ratings will be defined in relation to the measure being evaluated.

NEW SECTION

WAC 108-30-040 Review process. (1) Charter school responsibilities. Charter schools shall submit data, documentation, or other evidence to establish compliance with the performance framework and terms of the charter contract. The charter school shall also submit additional data, documentation, or other evidence necessary to facilitate oversight and monitoring by the commission. This includes, at a minimum:

(a) Submission of the data, documentation, or evidence to the commission in accordance with the format and time frames established by the commission prior to the beginning of each school year. This will include submission of an annual report but may also require submission of other reports at more frequent intervals.

(b) Submission of additional data, documentation, or evidence that the commission determines to be relevant to evaluation of compliance with the performance framework within ten business days of the commission's request, unless otherwise indicated in the request.

(c) Charter schools shall submit independent audit reports and any associated findings to the commission within ten business days of receipt by the charter school.

(d) Charter schools shall respond, within reasonable time frames, to any notice of concerns about unsatisfactory performance or legal compliance provided by the commission. The charter school will work with the commission to remedy the problem.

(e) Charter schools shall comply with any corrective action plan required by the commission.

(f) Multiple schools operating under a single charter contract or overseen by a single charter school board must report their performance as separate schools, and each school shall be held independently accountable for its performance.

(g) Charter schools may submit a written response to any findings or recommendations contained in the compliance review report within ten business days of issuance of the report.

(2) Commission responsibilities. The commission will continually monitor the performance and legal compliance of the charter schools it oversees, at a minimum, this will include:

(a) Collecting and analyzing data to support ongoing evaluation according to the performance framework.

(b) Annual evaluation of compliance with the performance framework in accordance with established rating categories and associated rubric(s).

(c) Annual issuance of a compliance review report that documents the results of the annual evaluation, along with any additional relevant information, including necessary corrective action.

(d) Before the beginning of each school year, establish format and time frames governing the submission of data, documentation, or evidence to be submitted to the commission by the charter schools.

(e) Post time frames on the commission's web site.

(f) Notification to the charter school of perceived problems about unsatisfactory performance or legal compliance, perceived or otherwise, will be given within reasonable time frames considering the scope and severity of the concern. The charter school will be given a reasonable opportunity to remedy the problem, unless revocation is warranted by the law.

(i) A perceived problem exists when the commission has conducted an inquiry and it is reasonable to believe that the issue exists (anytime a complaint is brought or information is brought forward).

(ii) The commission will respond to any general reporting of issues within a reasonable amount of time depending upon the scope and severity of the concern. When the health or safety of children are at risk a response will be made within forty-eight hours.

(g) Taking corrective action, or exercising sanctions including, but not limited to, successful completion of a corrective action plan within a specified time frame to address apparent deficiencies in charter school performance or legal compliance.

(h) Imposition of sanctions if the commission determines that it is necessary to address noncompliance.

(i) Consideration of any written response that a charter school submits in response to the commission's findings or recommendations.

(3) Nothing in this provision will preclude the commission from requesting additional information outside established time frames when the commission determines that the information is necessary to satisfy its monitoring and oversight responsibilities under the law.

(4) Nothing in this provision precludes the commission from conducting inquiries or investigations into charter school performance on an as needed basis. If the commission determines that notice may compromise an investigation or inquiry, notice will be provided upon completion of the investigation or inquiry.

(5) Failure to submit data, documentation, or evidence as requested by the commission could result in a finding of "does not meet standard" for the performance framework or corrective action.

WSR 13-13-087
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
 [Filed June 19, 2013, 12:01 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 14.04 (Processing of Public Records Requests—General) and 14.07 (Costs of Providing Copies of Public Records).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on July 25, 2013, at 8:45 a.m.

Date of Intended Adoption: July 25, 2013.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@psc-cleanair.org, fax (206) 343-7522, by July 24, 2013.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by July 18, 2013, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Puget Sound Clean Air Agency (agency) proposes two amendments to its existing rules implementing the Public Records Act, chapter 42.56 RCW. Consistent with RCW 42.56.520, the first proposed amendment is intended to allow the agency to close requests when a requester has not responded to a request for clarification. The second proposed amendment would allow the agency to charge a scanning fee of fifteen cents per page for requests seeking more than fifty scanned pages. (The first fifty scanned pages for all requests would be free.)

Reasons Supporting Proposal: The benefit of the first amendment is to make the agency's rules consistent with state law and to allow the agency to close unclarified requests. The benefit of the second amendment is that it would allow the agency to recoup scanning costs for larger requests (greater than fifty pages) when a requester wants scanned copies of existing paper records. Adoption of this scanning fee would mirror the agency's existing fee for paper copies: Fifteen cents a page for paper copies made after the first fifty free paper copies.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Dold, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4015; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

June 19, 2013
 Craig Kenworthy
 Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 14.04 PROCESSING OF PUBLIC RECORDS REQUESTS—GENERAL

(a) **Agency processes requests efficiently.** The public records officer will process requests in the order allowing the most requests to be processed in the most efficient manner.

(b) **Acknowledging receipt of request.** Within 5 business days of receipt of a request, the public records officer will do one or more of the following:

(1) Provide copies of the requested public records to the requester, if copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon;

(2) Provide an internet address and link on the Agency's website to the specific public records requested;

(3) Make the public records available for inspection or copying;

(4) Provide a reasonable estimate of when records will be available;

(5) If the request is unclear or does not sufficiently identify the requested public records, request clarification from the requester. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available based upon a clarification; or

(6) Deny the request.

(c) **Failure to respond.** If the Agency does not respond in writing within 5 business days of receipt of the request for disclosure, the requester should consider contacting the public records officer to determine the reason for the failure to respond.

(d) **Protecting rights of others.** In the event that the requested public records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the public records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requester and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to an affected person will include a copy of the request. The requester will be notified of the time provided to an affected person to respond to a notice under this section.

(e) **Inspection of public records.**

(1) Consistent with other demands, the Agency shall promptly provide space to a requester to inspect public records. No member of the public may remove a public record from the viewing area or disassemble or alter any public record. The requester shall indicate which public records they wish the Agency to copy.

(2) The requester must claim or review the assembled public records within 30 days of the Agency's notification

that the public records are available for inspection or copying. The Agency will notify the requester in writing of this requirement and inform the requester that they should contact the Agency to make arrangements to claim or review the public records. If the requester or a representative of the requester fails to claim or review the public records within the 30-day period or make other arrangements, the Agency may close the request and re-file the assembled public records. Other public records requests may be processed ahead of a subsequent request by the same person for the same or almost identical public records, which can be processed as a new request.

(f) **Providing copies of public records.** After inspection is complete, the public records officer shall make the requested copies or arrange for copying.

(g) **Providing public records in installments.** When the request is for a large number of public records, the public records officer will provide access for inspection and copying in installments, if the officer reasonably determines that it would be practical to provide the records in that way. If, within 30 days, the requester fails to inspect the entire set of public records or one or more of the installments, the public records officer may stop searching for the remaining records and close the request.

(h) **When access to Agency website is unavailable to requester.** If a requester notifies the Agency that they cannot access an Agency public record through the Agency's website, the Agency will make a paper copy of the requested public record available to the requester.

(i) **Completion of inspection.** When an inspection of requested public records is complete and all requested copies are provided, the public records officer will indicate to the requester that the Agency has made all located, nonexempt public records available for inspection.

(j) **Closing withdrawn or abandoned requests.** When a requester withdraws a request, fails to fulfill his or her obligations to inspect the public records, fails to clarify a request, or fails to pay a deposit or final payment for requested copies, the public records officer will close the request and indicate to the requester that the Agency has closed the request.

(k) **Later discovered documents.** If, after the Agency has informed a requester that it has provided all available public records, the Agency becomes aware of additional responsive public records existing at the time of the request, it will promptly inform the requester of the additional public records and provide them on an expedited basis.

AMENDATORY SECTION

REGULATION I, SECTION 14.07 COSTS OF PROVIDING COPIES OF PUBLIC RECORDS

(a) **No fee for inspecting public records.** There is no fee for inspecting public records. There is no fee for the Agency's time spent locating records; ~~((+))~~ for preparing public records for inspection; ~~((+))~~ copying, or scanning; or for e-mailing electronic public records to a requester.

(b) **Costs for paper copies.**

~~((+))~~ There is no fee for the first 50 paper copies made per request. For requests greater than 50 pages:

~~1((A))~~ If paper copies are made at the Agency, a requester may obtain photocopies for \$.15 per page;

~~2((B))~~ If paper copies are made outside the Agency at a commercial copier, a requester may obtain copies at the actual cost charged by the commercial copier.

~~((2))~~ Before beginning to make paper copies, the public records officer may require a deposit of up to 10% of the estimated costs of copying all the public records selected by the requester. The public records officer may also require the payment of the remainder of the copying costs before providing all the public records, or the payment of the costs of copying an installment before providing that installment. The Agency does not charge sales tax when it makes copies of public records.

(c) **Costs for scanned ~~((electronic))~~ public records.** There is no fee for the first 50 pages scanned per request ((e-mailing electronic public records to a requester)). For requests greater than 50 pages:

(1) If records are scanned by the Agency, a requester may obtain scanned pages for \$.15 per page;

(2) If the Agency uses a commercial copier to scan public records to respond to a request electronically, a requester may obtain the scanned public records at the actual scanning cost charged by the commercial copier.

(d) **Deposits.** Before beginning to make paper copies or scanning records, the public records officer may require a deposit of up to 10% of the estimated costs of copying or scanning the public records selected by the requester. The public records officer may also require the payment of the remainder of the copying or scanning costs before providing all the public records, or the payment of the costs of copying or scanning an installment before providing that installment. The Agency does not charge sales tax when it makes copies of or scans public records.

(e) **Costs of mailing.** The Agency may also charge actual costs of mailing, including the cost of the shipping container.

(f)~~((e))~~ **Payment.** Payment may be made by cash, check, money order, or credit card to the Puget Sound Clean Air Agency.