

WSR 13-16-069
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY
 [Filed August 5, 2013, 10:54 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SRCAA Regulation I, Article VI, Section 6.01 - Outdoor Burning and SRCAA Regulation I, Article X, Section 10.13 - Outdoor Burning Permit Fees.

Hearing Location(s): Spokane Regional Clean Air Agency (SRCAA), 3104 East Augusta Avenue, Spokane, WA 99207, on October 3, 2013, at 9:30 a.m.

Date of Intended Adoption: October 3, 2013.

Submit Written Comments to: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mholmquist@spokaneleanair.org, fax (509) 477-6828, by September 20, 2013.

Assistance for Persons with Disabilities: Contact Barbara Nelson by September 26, 2013, (509) 477-4727 ext. 116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In summary, revisions are designed to make the regulation largely a stand-alone document which will help alleviate the need to routinely cross-reference the Washington Administrative Code (WAC) for applicable requirements. It will incorporate the definitions into applicable subsections, where practical, so that there's no need to jump between the body of the regulation and the definitions section when reading the regulation. For each type of outdoor burning, it lists applicable requirements. The proposal addresses forest fire training and other types of firefighting instruction fires (e.g., car rescue training fires, simulated fires at permanent fire training facilities, mobile fire training units, etc.). Like other fire training fires in the current regulation, these fires would be allowed by rule (no written permit and no fee). The proposal also allows for flag retirement ceremonies by rule. The revisions include a nuisance provision specific to outdoor burning. All permit waiting periods are made to be consistent with the only fee increase proposal being for social event fires (\$50 to \$55).

Reasons Supporting Proposal: Same as above.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2), 70.94.6518, and chapter 173-425 WAC.

Statute Being Implemented: RCW 70.94.755, 70.94.-6511 - [70.94.]6518, 70.94.6544 - [70.94.]6552, chapter 173-425 WAC.

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

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. SRCAA is not required under chapter 19.85 RCW to file small business economic impact statements.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1). RCW 34.05.328 does not apply to this rule.

August 5, 2013
 Matt Holmquist
 Compliance Administrator

REPEALER

The following section of Spokane Regional Clean Air Agency (SRCAA) Regulation I, Article VI, is repealed:

SECTION 6.01 - OUTDOOR BURNING

NEW SECTION

SECTION 6.01 OUTDOOR BURNING

A. Purpose. (WAC 173-425-010 (1-3))

This Section establishes controls for outdoor burning in Spokane County in order to:

1. Minimize or prohibit outdoor burning to the greatest extent practicable.
2. Minimize or eliminate the impact of emissions from outdoor burning by defining conditions under which outdoor burning may be conducted.
3. Encourage the development and specify the use of reasonable alternatives to outdoor burning. Reasonable alternatives are methods for disposing of organic refuse (such as natural vegetation) that are available, reasonably economical, and less harmful to the environment than burning.

4. Geographically limit outdoor burning in order to assure continued attainment of the National Ambient Air Quality Standards for carbon monoxide (CO) and fine particulate matter (PM_{2.5}) as specified in 40 CFR Part 50.

B. Applicability. (WAC 173-425-020)

1. This Section applies to all outdoor burning in Spokane County except:

a. Silvicultural burning. (RCW 70.94.6534(1) & Chapter 332-24 WAC)

Silvicultural burning is related to the following activities for the protection of life or property and/or the public health, safety, and welfare:

- i. Abating a forest fire hazard;
- ii. Prevention of a forest fire hazard;
- iii. Instruction of public officials in methods of forest firefighting;
- iv. Any silvicultural operation to improve the forest lands of the state; and

v. Silvicultural burning used to improve or maintain fire dependant ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

b. Agricultural Burning. (Section 6.11 of this Regulation)

Agricultural burning is burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, necessary to destroy weeds or crop residue along farm fence rows, irrigation ditches, or farm drainage ditches, or where identified as a best management practice by the agricultural

burning practices and research task force established in RCW 70.94.6528 or other authoritative source on agricultural practices.

c. Any outdoor burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreement).

2. This Section specifically applies to:

a. Firefighting Instruction Fires.

i. Aircraft Crash Rescue Fire Training. (Section 6.01.D.

1.a)

ii. Extinguisher Training. (Section 6.01.D.1.b)

iii. Forest Fire Training. (Section 6.01.D.1.c)

iv. Structural Fire Training. (Section 6.01.D.1.d)

v. Types of Other Firefighting Instruction Fires. (Section 6.01.D.1.e)

b. Fire Hazard Abatement Fires. (Section 6.01.D.2)

c. Flag Retirement Ceremony Fires. (Section 6.01.D.3)

d. Indian Ceremonial Fires. (Section 6.01.D.4)

e. Land Clearing Fires. (Section 6.01.D.5)

f. Rare and Endangered Plant Regeneration Fires. (Section 6.01.D.6)

g. Recreational Fires. (Section 6.01.D.7)

h. Residential Fires. (Section 6.01.D.8)

i. Social Event Fires. (Section 6.01.D.9)

j. Storm or Flood Debris Fires. (Section 6.01.D.10)

k. Tumbleweed Fires. (Section 6.01.D.11)

l. Weed Abatement Fires. (Section 6.01.D.12)

m. Other Outdoor Fires. (Section 6.01.D.13)

3. The provisions of Chapter 173-425 WAC (Outdoor Burning) are herein incorporated by reference.

4. The provisions of this Section are severable. If any phrase, sentence, paragraph, or provision is held invalid, the application of such phrase, sentence, paragraph, or provision to other circumstances and the remainder of this Section shall not be affected.

C. Definitions. (WAC 173-425-030)

Words and phrases used in this Section shall have the meaning defined in Chapter 173-425 WAC, unless a different meaning is clearly required by context or is otherwise defined in this Section.

1. Natural Vegetation means unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood. It does not include dimensional lumber, mills ends, etc.

2. Outdoor Burning means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. For the purpose of this rule, "outdoor burning" means all types of outdoor burning except agricultural burning and silvicultural burning. (RCW 70.94.-6511)

3. Permitting Agency means the Spokane Regional Clean Air Agency (SRCAA), or one or more of the following entities, whenever SRCAA and an entity have signed an agreement regarding a permitting program or SRCAA has delegated administration of the permitting program to one or more of the following entities, provided such delegation of authority has not been withdrawn: Spokane County, any fire protection agency within Spokane County, Washington State

Department of Natural Resources (DNR), or the Spokane County Conservation District. (RCW 70.94.6530)

4. Person means any individual(s), firm, public corporation, private corporation, association, partnership, political subdivision, municipality, or government agency. It includes any person who has applied for and received a permit for outdoor burning; any person allowing, igniting, or attending a fire; or any person who owns or controls property on which outdoor burning occurs.

5. Responsible Person means any person who has applied for and received a permit for outdoor burning, or any person allowing, igniting, or attending to a fire, or any person who owns or controls property on which outdoor burning occurs.

D. Outdoor Burning Permitted.

1. Firefighting Instruction Fires. (WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

Firefighting instruction fires are fires for the purpose of firefighter training, including, but not limited to aircraft crash rescue fire training, extinguisher training, forest fire training, and structural fire training. Unless specified otherwise, this subsection serves as a general permit by SRCAA.

a. Aircraft Crash Rescue Fire Training. (RCW 70.94.-6546 (1-2), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

i. Aircraft crash rescue training fires conducted pursuant to all of the following do not require a permit:

(a) Firefighters participating in the training fires are limited to those who provide firefighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities.

(b) The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715 for the area where training is to be conducted.

(c) The number of training fires allowed each year without a written permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements.

(d) The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during the training fire.

(e) The organization conducting the training shall notify the local fire district or fire department prior to commencement of the training. The organization conducting the training shall also notify SRCAA prior to commencement of the training.

ii. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to all aircraft crash rescue fire training fires as listed below:

(a) Aircraft crash rescue fire training fires are exempt from the following:

F.2. Hauled Materials

F.6. Containers

F.8. Distances

F.10. Burn Hours

F.11. Number of Piles

F.12. Fuel Area

F.13. Written Permits

F.15. Areas Prohibited

(b) Aircraft crash rescue fire training fires are not exempt from the following:

F.1. Prohibited Materials (except petroleum products)

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.7. Extinguishing a Fire

F.9. Landowner Permission

F.14. Property Access

F.16. Other Requirements

iii. Persons conducting aircraft crash rescue fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

b. Extinguisher Training. (WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

Extinguisher training fires of short-duration for instruction on the proper use of hand-held fire extinguishers may be conducted without a written permit provided all of the following requirements are met:

i. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to extinguisher training fires as listed below:

(a) Extinguisher training fires are exempt from the following:

F.2. Hauled Materials

F.6. Containers

F.8. Distances

F.10. Burn Hours

F.11. Number of Piles

F.12. Fuel Area

F.13. Written Permits

F.15. Areas Prohibited

(b) Extinguisher training fires are not exempt from the following:

F.1. Prohibited Materials (except as provided for in Section 6.01.D.1.b.ii of this Regulation, below)

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.7. Extinguishing a Fire

F.9. Landowner Permission

F.14. Property Access

F.16. Other Requirements

ii. Flammable or combustible materials used during the fire extinguisher training shall be limited to:

(1) Less than 2 gallons of clean kerosene or diesel fuel oil per training exercise, provided that gasoline or gasoline mixed with diesel or kerosene may be used only by local fire departments, fire protection agencies, fire marshals, or fire districts;

(2) As much gaseous fuel (propane or natural gas) as required for the training exercise; or

(3) Less than 0.5 cubic yards of clean, solid combustible materials per training exercise. Examples of solid combustible materials are seasoned wood, untreated scrap lumber, and unused paper.

iii. All training must be conducted by fire training officials or an instructor qualified to perform fire training. A copy of the written training plan, and when applicable, instructor qualifications, must be provided to SRCAA upon request.

iii. Prior to the training, the responsible person(s) conducting the exercise must notify the local fire department, fire marshal, or fire district and meet all applicable local ordinances and permitting requirements.

v. Persons conducting extinguisher training fires are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

c. Forest Fire Training. ((RCW 70.94.6546(4), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

A fire protection agency may conduct forest fire training fires consisting of only natural vegetation without a written permit.

i. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to forest fire training fires as listed below:

(a) Forest fire training fires are exempt from the following:

F.2. Hauled Materials

F.6. Containers

F.8. Distances

F.10. Burn Hours

F.11. Number of Piles

F.12. Fuel Area

F.13. Written Permits

F.15. Areas Prohibited

(b) Forest fire training fires are not exempt from the following:

F.1. Prohibited Materials

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.7. Extinguishing a Fire

F.9. Landowner Permission

F.14. Property Access

F.16. Other Requirements

ii. Grassland or wildland fires used for the purpose of forest fire training fires qualify as forest firefighting instruction fires. Grassland or wildland fires not used for the purpose of forest fire instruction fires shall be performed pursuant to Section 6.01.D.1.e of this Regulation. Section 6.01.D.1.e is Types of Firefighting Instruction Fires Not Listed Above.

iii. Persons conducting forest fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

d. Structural Fire Training. ((RCW 52.12.150(4), (RCW 70.94.6546(3), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

A fire protection agency may conduct structural fire training without a written permit provided all of the following requirements are met:

i. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to structural fire training fires as listed below:

(a) Structural fire training fires are exempt from the following:

F.1. Prohibited Materials (except as provided for in Section 6.01.D.1.d.iv of this Regulation, below)

F.2. Hauled Materials

F.6. Containers

F.8. Distances

F.10. Burn Hours

F.11. Number of Piles

F.12. Fuel Area

F.13. Written Permits

F.15. Areas Prohibited

(b) Structural fire training fires are not exempt from the following:

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.7. Extinguishing a Fire

F.9. Landowner Permission

F.14. Property Access

F.16. Other Requirements

ii. The owner and fire protection agency(ies) must meet the requirements in SRCAA Regulation I, Article IX - Asbestos Control Standards and SRCAA Regulation I, Article X, Section 10.09 - Asbestos Project And Demolition Notification Waiting Period And Fees, prior to conducting the training. This includes clearly identifying structures on the Notice of Intent that will be used for structural fire training.

iii. The fire protection agency(ies) conducting the fire training must have a fire training plan available to SRCAA upon request, and the purpose of the structural fire must be to train firefighters.

iv. Composition roofing, asphalt roofing shingles, asphalt siding materials, miscellaneous debris from inside the structure, carpet, linoleum, and floor tile shall not be burned unless such materials are an essential part of the fire training exercise and are described as such in the fire training plan. Materials removed from the structure(s) must be disposed of in a lawful manner prior to the training exercise.

v. Structural fire training shall not be conducted if, in consideration of prevailing air patterns, the fire is likely to cause a nuisance.

vi. The fire protection agency(ies) conducting the training must provide notice to the owners of property adjoining the property on which the fire training will occur, to other persons who potentially will be impacted by the fire, and to additional persons in a broader manner if specifically requested by SRCAA.

vii. Structural fire training shall be performed in accordance with RCW 52.12.150.

viii. Persons conducting structural fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

e. Types of Firefighting Instruction Fires Not Listed Above. (WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

A fire protection agency may conduct firefighting instruction fires not provided for in Section 6.01.D.1.a-d of this Regulation (e.g., car rescue training fires, simulated fires at permanent fire training facilities, simulated fires via mobile fire training units, etc.) if all of the following are met:

i. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to other firefighting instruction fires as listed below:

(a) Other firefighting training fires are exempt from the following:

F.2. Hauled Materials

F.6. Containers

F.8. Distances

F.10. Burn Hours

F.11. Number of Piles

F.12. Fuel Area

F.13. Written Permits

F.15. Areas Prohibited

(b) Other firefighting training fires are not exempt from the following:

F.1. Prohibited Materials (except as provided for in Section 6.01.D.1.e.iii of this Regulation)

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.7. Extinguishing a Fire

F.9. Landowner Permission

F.14. Property Access

F.16. Other Requirements

ii. The fire protection agency(ies) conducting the fire training must have a fire-training plan available to SRCAA upon request, and the purpose of the structural fire must be to train firefighters.

iii. The prohibited materials described in Section 6.01.F.2 of this Regulation may not be burned in any fire unless such materials are an essential part of the fire training exercise and are described as such in the fire training plan.

iv. Persons conducting other firefighting training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

2. Fire Hazard Abatement Fires.

a. A permit from a permitting agency other than SRCAA is required pursuant to Section 6.01.E of this Regulation for fire hazard abatement fires. All fire hazard abatement fires require a written permit unless an alternate permitting method is specified in a written agreement (e.g. Memorandum of Understanding) between SRCAA and the permitting agency.

b. Unless specifically authorized in writing by the permitting agency and pursuant to a written agreement between SRCAA and the permitting agency, the prohibitions/requirements in Section 6.01.F of this Regulation apply as listed below:

i. Fire hazard abatement fires may be exempt from the following at the permitting agency's discretion:

F.8. Distances

F.11. Number of Piles

F.12. Fuel Area

ii. Fire hazard abatement fires are not exempt from the following:

- F.1. Prohibited Materials
- F.2. Hauled Materials
- F.3. Curtailments
- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.6. Containers
- F.7. Extinguishing a Fire
- F.9. Landowner Permission
- F.10. Burn Hours
- F.13. Written Permits
- F.14. Property Access
- F.15. Areas Prohibited
- F.16. Other Requirements

3. Flag Retirement Ceremony Fires. (RCW 70.94.6522, WAC 173-425-020 (2)(j), WAC 173-425-030(15), WAC 173-425-040(5), WAC 173-425-060 (1)(b), and WAC 173-425-060 (1), (2)(j) & (3-4))

A flag retirement ceremony fire is a ceremonial fire for the purpose of disposing of cotton or wool flags of the United States of America, by fire, pursuant to 36 United States Code 176(k). A flag retirement ceremony fire is a type of other outdoor fire as provided for in WAC 173-425-030(15). The ceremony generally involves placing the flags one at a time in a small fire during the ceremony until the last flag is burned.

a. This subsection serves as a general permit by SRCAA.

b. The prohibitions/requirements in Section 6.01.F of this Regulation apply to flag retirement ceremony fires as listed below:

i. Unless specifically authorized in writing by SRCAA, flag retirement ceremony fires are exempt from the following:

- F.2. Hauled Materials
- F.6. Containers
- F.8. Distances
- F.10. Burn Hours
- F.11. Number of Piles
- F.12. Fuel Area
- F.13. Written Permits
- F.15. Areas Prohibited

ii. Flag retirement ceremony fires are not exempt from the following:

- F.1. Prohibited Materials (except for cotton or wool flags and minimal accelerant necessary to burn the flags)
- F.3. Curtailments
- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.7. Extinguishing a Fire
- F.9. Landowner Permission
- F.14. Property Access
- F.16. Other Requirements

c. A ceremony for disposal of unserviceable cotton or wool flags using methods other than burning (e.g. burying or recycling) or burning a small number of representative cotton or wool flags for the flag retirement ceremony is recommended, but not required.

d. Burning flags made of synthetic materials (e.g. nylon) is prohibited.

4. Indian Ceremonial Fires. (RCW 70.94.6550, WAC 173-425-020 (2)(h), WAC 173-425-030(8)), WAC 173-425-050, WAC 173-425-060 (1), (2)(h) & (3-4))

Indian ceremonial fires are fires using charcoal or clean, dry, bare, untreated wood (for the purpose of this definition, it includes commercially manufactured fire logs) necessary for Native American Ceremonies (i.e. conducted by and for Native Americans) if part of a religious ritual.

a. This subsection serves as a general permit by SRCAA.

b. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to Indian ceremonial fires as listed below:

i. Indian ceremonial fires are exempt from the following:

- F.2. Hauled Materials
- F.6.b. Containers
- F.10. Burn Hours
- F.13. Written Permits
- F.15. Areas Prohibited

ii. Indian ceremonial fires are not exempt from the following:

- F.1. Prohibited Materials
- F.3. Curtailments
- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.6.a. Containers (burn barrels)
- F.7. Extinguishing a Fire
- F.8. Distances
- F.9. Landowner Permission
- F.11. Number of Piles
- F.12. Fuel Area
- F.14. Property Access
- F.16. Other Requirements

5. Land Clearing Fires. (WAC 173-425-020 (2)(b), WAC 173-425-030(9), WAC 173-425-040 (1-5), WAC 173-425-050, WAC 173-425-060 (1)(b) and WAC 173-425-060 (1), (2)(b) & (3-4))

a. All land clearing burning, except for silvicultural-to-agricultural and residential land clearing burning, is prohibited effective January 13, 2002.

b. Silvicultural-to-agricultural burning is prohibited after April 30, 2009.

c. Residential land clearing burning is prohibited after December 31, 2010. Residential land clearing fires are limited to fires consisting of trees, shrubbery, or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused) where the natural vegetation is cleared from less than one acre of forested land on a five acre or larger parcel of land in non-commercial ownership. (RCW 70.94.6526(2)). Residential land clearing fires may also have the effect of abating or prevention of a forest fire hazard and thereby fit the definition of silvicultural burning. In those situations where residential land clearing burning consists of materials cleared from less than 1 acre of forested land on a 5 acre or larger parcel of land in non-commercial ownership is determined by DNR to meet the criteria to be defined as silvicultural burning, SRCAA may defer the decision to DNR to approve the fire and issue a permit pursuant to a Memorandum of Understanding between SRCAA and DNR. In so

doing, DNR acknowledges that the fire is silvicultural burning and subject to Chapter 332-24 WAC.

6. Rare and Endangered Plant Regeneration Fires. (RCW 70.94.6524, RCW 70.94.6534(2), WAC 173-425-020 (2)(g), WAC 173-425-030(19), WAC 173-425-050, WAC 173-425-060 (1), (2)(g), (3-4) & (6).

Rare and endangered plant regeneration fires are fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified in Chapter 79.70 RCW.

a. Pursuant to RCW 70.94.6534(2), the appropriate fire protection agency permits and regulates rare and endangered plant regeneration fires on lands where the department of natural resources does not have fire protection responsibility.

b. Unless otherwise allowed or required by the fire protection agency, the prohibitions/requirements in Section 6.01.F of this Regulation apply to rare and endangered plant regeneration fires as listed below:

i. Rare and endangered plant regeneration fires are exempt from the following:

- F.8. Distances
- F.10. Burn Hours
- F.11. Number of Piles
- F.12. Fuel Area
- F.13. Written Permits
- F.15. Areas Prohibited

ii. Rare and endangered plant regeneration fires are not exempt from the following:

- F.1. Prohibited Materials
- F.2. Hauled Materials
- F.3. Curtailments
- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.6. Containers
- F.7. Extinguishing a Fire
- F.9. Landowner Permission
- F.14. Property Access
- F.16. Other Requirements

c. Pursuant to WAC 173-425-060(6), any agency that issues permits, or adopts a general permit for rare and endangered plant regeneration fires is responsible for field response to outdoor burning complaints and enforcement of all permit conditions and requirements of Chapter 173-425 WAC unless another agency has agreed under WAC 173-425-060 (1)(a) to be responsible for certain field response or enforcement activities. Except for enforcing fire danger burn bans as referenced in WAC 173-425-050 (3)(a)(iii), SRCAA may also perform complaint response and enforcement activities.

7. Recreational Fires. WAC 173-425-020 (2)(i), WAC 173-425-030(21), WAC 173-425-050, WAC 173-425-060 (1), (2)(i) & (3-4))

A recreational fire is a small fire with a fuel area no larger than 3 feet in diameter and 2 feet in height and is limited to cooking fires, campfires, and fires for pleasure using charcoal or firewood in designated areas on public lands (e.g. campgrounds) or on private property. Firewood refers to clean, dry (e.g., tree trunk wood that is split and seasoned and has less than 20 percent moisture content), bare, wood from trees. Commercially manufactured fire logs are acceptable fuels unless determined otherwise by SRCAA. Fires fueled

by liquid or gaseous fuels (e.g. propane or natural gas barbecues) are not considered recreational fires. Fires used for debris disposal are not considered recreational fires.

a. This subsection serves as a general permit by SRCAA.

b. The prohibitions/requirements in Section 6.01.F of this Regulation apply to recreational fires as listed below:

i. Recreational fires are exempt from the following:

- F.2. Hauled Materials
- F.6.b. Containers
- F.10. Burn Hours
- F.13. Written Permits
- F.15. Areas Prohibited

ii. Recreational fires are not exempt from the following:

- F.1. Prohibited Materials
- F.3. Curtailments
- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.6.a. Containers (burn barrels)
- F.7. Extinguishing a Fire
- F.8. Distances
- F.9. Landowner Permission
- F.11. Number of Piles
- F.12. Fuel Area
- F.14. Property Access
- F.16. Other Requirements

8. Residential Fires (also referred to as Residential Burning or Residential Yard and Garden Debris Burning). (WAC 173-425-020 (2)(a), WAC 173-425-030(22), WAC 173-425-040 (1-3) & (5), WAC 173-425-050, WAC 173-425-060 (1), (2)(a) & (3-6))

A residential fire is an outdoor fire consisting of natural yard and garden debris (i.e., dry garden trimmings, dry tree clippings, dry leaves, etc.) originating on the maintained/improved area of residential property (i.e. lands immediately adjacent and in close proximity to a human dwelling), and burned on such lands by the property owner and/or any other responsible person.

a. A permit from a permitting agency other than SRCAA is required pursuant to Section 6.01.E of this Regulation. All residential fires require a written permit unless an alternate permitting method (e.g. general permit adopted by rule) is specified in a written agreement (e.g. Memorandum of Understanding) between SRCAA and the permitting agency.

b. The prohibitions/requirements in Section 6.01.F of this Regulation apply to residential fires as listed below:

i. No exemptions apply to residential fires.

ii. Residential fires are not exempt from the following:

- F.1. Prohibited Materials
- F.2. Hauled Materials
- F.3. Curtailments
- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.6. Containers
- F.7. Extinguishing a Fire
- F.8. Distances
- F.9. Landowner Permission
- F.10. Burn Hours
- F.11. Number of Piles
- F.12. Fuel Area (except as provided in Section 6.01.D.8.

c of this Regulation, below)

- F.13. Written Permits
- F.14. Property Access
- F.15. Areas Prohibited
- F.16. Other Requirements

c. The fuel area is limited to 4 feet in diameter and 3 feet in height unless the written permit issued by the permitting agency specifically states otherwise. Under no circumstance shall the fuel area be greater than 10 feet in diameter and 6 feet in height.

d. No vegetation shall exceed 4 inches in diameter unless the permitting agency provides a site-specific exemption in a written permit. If larger diameter vegetation is allowed, the fire shall be constructed using heavy equipment such as a track hoe or excavator with an operator on site at all times. Fans must be employed to improve combustion.

e. Residential fires must be at least 500 feet away from forest slash.

f. Residential fires must be at least 50 feet away from any adjacent land under different ownership unless the permitting agency provides a site-specific exception in the written permit and the respective neighboring landowner or landowner's designated representative gives the person responsible for burning approval to burn within 50 feet of his/her land.

g. In addition to the prohibitions in Section 6.01.F.15, residential burning is prohibited within any area where a permitting agency does not administer a residential burning program.

9. Social Event Fires. (WAC 173-425-020 (2)(i), WAC 173-425-030(21), WAC 173-425-050, WAC 173-425-060 (1), (2)(i) & (4))

A social event fire is a fire that may be greater than 3 feet in diameter and 2 feet in height and unless otherwise approved by SRCAA, is limited to events or celebrations open to the general public. A social event fire is limited to using charcoal or firewood which occurs in designated areas on public lands or on private property. Firewood refers to clean, dry (e.g., tree trunk wood that is split and seasoned with less than 20 percent moisture content), bare, wood from trees. Commercially manufactured fire logs are acceptable fuels. Fires used for debris disposal are not considered social event fires.

a. A written permit from SRCAA is required pursuant to Section 6.01.E of this Regulation and, unless otherwise approved by SRCAA, must be submitted at least 10 working days prior to the first proposed burn date.

b. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply as listed below:

i. Social event fires may be exempt from the following at SRCAA's discretion:

- F.2. Hauled Materials
- F.6.b. Containers
- F.8. Distances
- F.10. Burn Hours
- F.11. Number of Piles
- F.12. Fuel Area
- F.15. Areas Prohibited

ii. Social event fires are not exempt from the following:

- F.1. Prohibited Materials
- F.3. Curtailments

- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.6.a. Containers (burn barrels)
- F.7. Extinguishing a Fire
- F.9. Landowner Permission
- F.13. Written Permits
- F.14. Property Access
- F.16. Other Requirements

10. Storm or Flood Debris Fires. (RCW 70.94.743 (1)(c), WAC 173-425-020 (2)(c), WAC 173-425-030(24), WAC 173-425-040(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(c) & (3-4))

Storm and flood debris fires are fires consisting of natural vegetation deposited on lands by storms or floods that occurred within the previous 24 months, and resulted in an emergency being declared or proclaimed in the area by city, county, or state government, and burned by the property owner or other responsible person on lands where the natural vegetation was deposited by the storm or flood.

a. A written permit from SRCAA is required pursuant to Section 6.01.E of this Regulation and, unless otherwise approved by SRCAA, must be submitted at least 10 working days prior to the first proposed burn date.

b. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply as listed below:

i. Storm or flood debris fires may be exempt from the following at SRCAA's discretion:

F.12. Fuel Area

ii. Storm or flood debris fires are not exempt from the following:

- F.1. Prohibited Materials
- F.2. Hauled Materials
- F.3. Curtailments
- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.6. Containers
- F.7. Extinguishing a Fire
- F.8. Distances
- F.9. Landowner Permission
- F.10. Burn Hours
- F.11. Number of Piles
- F.13. Written Permits
- F.14. Property Access
- F.15. Areas Prohibited
- F.16. Other Requirements

11. Tumbleweed Fires. (RCW 70.94.6554)

Tumbleweed fires are fires to dispose of dry plants (e.g., Russian Thistle and Tumbleweed Mustard Plants) that have been broken off, and rolled about, by the wind. Outdoor burning of tumbleweeds is prohibited. However, agricultural operations may burn tumbleweeds pursuant to Section 6.11 of this Regulation and Chapter 173-430 WAC.

12. Weed Abatement Fires. (RCW 70.94.6552, Chapter 16-750 WAC, WAC 173-425-020 (2)(e), WAC 173-425-030(27)), WAC 173-425-040(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(e) & (3-4))

A weed abatement fire is any outdoor fire undertaken for the sole purpose of disposing of noxious weeds identified in the state noxious weed list.

a. A written permit from a permitting agency other than SRCAA is required pursuant to Section 6.01.E of this Regulation.

b. The prohibitions/requirements in Section 6.01.F of this Regulation apply to weed abatement fires as listed below:

i. Weed abatement fires may be exempt from the following at the permitting agency's discretion:

F.11. Number of Piles (refer to Section 6.01.D.11.c of this Regulation, below)

F.12. Fuel Area (refer to Section 6.01.D.11.c of this Regulation, below)

ii. Weed abatement fires are not exempt from the following:

F.1. Prohibited Materials

F.2. Hauled Materials

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.6. Containers

F.7. Extinguishing a Fire

F.8. Distances

F.9. Landowner Permission

F.10. Burn Hours

F.13. Written Permits

F.14. Property Access

F.15. Areas Prohibited

F.16. Other Requirements

c. If burn piles are required by the permitting agency, the fuel area for each burn pile is limited to 10 feet in diameter and 6 feet in height unless the written permit issued by the permitting agency specifically states otherwise.

d. Burning shall be limited to Monday through Friday and shall not be conducted on federally observed holidays.

13. Other Outdoor Fires. (RCW 70.94.6522, WAC 173-425-020 (2)(j), WAC 173-425-030(15), WAC 173-425-040(5), WAC 173-425-060 (1)(b), and WAC 173-425-060 (1), (2)(j) & (3-4))

Other outdoor fires are any type of outdoor fires not specified in WAC 173-425-020 (2)(a-i).

a. Other outdoor burning will generally be limited by SRCAA to outdoor fires necessary to protect public health and safety.

b. Other outdoor burning will generally not be allowed unless SRCAA determines that extenuating circumstances exist that necessitate burning be allowed.

c. A permit application must be submitted at least 10 working days prior to the first proposed burn date unless SRCAA waives the advance application period. A written permit from SRCAA is required pursuant to Section 6.01.E of this Regulation unless SRCAA approves a verbal or electronic permit in lieu of a written permit. The applicant is responsible for payment of a permit application fee in the amount specified in Section 10.13 of this Regulation.

E. Application For and Permitting of Written Outdoor Burning Permits.

Outdoor burning requiring a written permit pursuant to Section 6.01.D of this Regulation is subject to all of the following requirements:

1. Permit Application.

a. It shall be unlawful for any person to cause or allow outdoor burning unless an application for a written permit, including the required fee specified by the permitting agency (SRCAA's outdoor burning permit fees are specified in Section 10.13 of this Regulation) and any additional information requested by the permitting agency, has been submitted to the permitting agency on approved forms, in accordance with the advance application period as specified by the permitting agency.

a. Incomplete or inaccurate applications may be returned to the applicant as incomplete. The advance application period begins when a complete and accurate application, including the required fee, has been received by the permitting authority.

b. Unless otherwise approved by the permitting agency or unless specified otherwise in Section 6.01, applications will be accepted no more than 90 days prior to the first proposed burn date.

c. A separate application must be completed and submitted to the appropriate permitting agency for each outdoor burn permit requested.

d. A permit for outdoor burning shall not be granted on the basis of a previous permit history.

2. Denial or Revocation of a Permit.

a. The permitting agency may deny a permit if it is determined by the permitting agency that the application is incomplete or inaccurate. The advance application period in Section 10.13 of this Regulation does not begin until a complete and accurate application, including any additional information requested by the permitting agency, is received by the permitting agency.

b. The permitting agency may deny a permit or revoke a previously issued permit if it is determined by the permitting agency that the application contained inaccurate information, or failed to contain pertinent information, and the information is deemed by the permitting agency to be significant enough to have a bearing on the permitting agency's decision to grant a permit.

c. An application for a permit shall be denied if the permitting agency determines that the proposed burning will cause or is likely to cause a nuisance (refer to Section 6.01.F.4 of this Regulation). In making this determination, the permitting agency may consider if the permit can be conditioned in such a way that burning is not likely to cause a nuisance (e.g., limit burning to specific wind directions, restrict burn hours, restrict pile size, etc.).

d. The permitting agency may deny a permit for other reasons and shall provide the reason(s) in the applicant's permit denial.

3. Permit Conditions

Permits may include requirements and restrictions beyond those specified in SRCAA Regulation I.

4. Permit Expiration.

Written permits shall be valid for no more than 30 consecutive calendar days unless specified otherwise in Section 6.01.D or in the permit. In no circumstance will a permit be valid for more than one calendar year.

F. Prohibitions/Requirements. (WAC 173-425-050 & WAC 173-425-060(4))

All of the following apply to all outdoor burning unless specified otherwise in Section 6.01 of this Regulation or pursuant to a written permit:

1. Prohibited Materials. (WAC 173-425-050(1))

It is unlawful to burn prohibited materials. Prohibited materials include all of the following: garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated or processed wood (other than commercially manufactured fire logs), construction and demolition debris (any material resulting from the construction, renovation, or demolition of buildings, roads, or other man made structures), metal, or any substance (other than natural vegetation or firewood) that releases dense smoke or obnoxious odors when burned, or normally releases toxic emissions when burned. (RCW 70.94.6512(1) and Attorney General Opinion 1993 #17).

2. Hauled Materials. (WAC 173-425-050(2))

It is unlawful for a fire to contain material that has been hauled from an area where outdoor burning of that material is prohibited.

3. Curtailments. (RCW 70.94.6512, RCW 70.94.6516, WAC 173-425-030(2), WAC 173-425-030(7), WAC 173-425-050(3), WAC 173-425-060(4) & WAC 173-433-140)

a. The person responsible for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day prior to igniting a fire.

b. Outdoor burning is prohibited in specified geographical areas when one or more of the following occur:

i. The Washington State Department of Ecology (Ecology) has declared an air pollution episode.

ii. Ecology or SRCAA has declared impaired air quality.

iii. A fire protection authority of jurisdiction has declared a fire danger burn ban, unless that authority grants an exception.

c. The person responsible for outdoor burning must extinguish the fire when an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning is declared. In this regard:

i. Smoke visible from all types of outdoor burning, except residential land clearing burning, after a time period of 3 hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

ii. Smoke visible from residential land clearing burning after a time period of 8 hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

4. Nuisance. (RCW 70.94.030(2) & WAC 173-425-050(4))

A nuisance refers to an emission of smoke or any other air contaminant that unreasonably interferes with the enjoyment of life and property. In addition to applicable odor nuisance regulations in Section 6.04 of this Regulation, it shall be unlawful for any person to conduct outdoor burning which causes a smoke or particulate nuisance. With respect to smoke or particulate from outdoor burning, SRCAA may

take enforcement action under this Section if the Control Officer or authorized representative has documented all of the following:

a. Visible smoke observed with natural or artificial light (e.g. flashlight) crossing the property line of the person making a complaint or particulate deposition on the property of the person making a complaint;

b. An affidavit from a person making a complaint that demonstrates that they have experienced air contaminant emissions in sufficient quantities, and of such characteristics and duration, so as to unreasonably interfere with their enjoyment of life and property; and

c. The source of the smoke or particulate.

5. Burning Detrimental to Others. (RCW 70.94.040, RCW 70.94.650(1), RCW 70.94.6516, and WAC 173-425-050(4))

It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, or that causes damage to property or business.

6. Containers. (WAC 173-425-050(5))

a. Burn barrels are prohibited.

b. Containers must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings no larger than one-half inch.

7. Extinguishing a Fire. (WAC 173-425-050 (6)(a) & WAC 173-425-060(4))

a. A person(s) capable of completely extinguishing the fire must attend it at all times.

b. Fire extinguishing equipment must be at the fire and ready to use (e.g., charged garden hose, dirt, sand, water bucket, shovel, fire extinguisher, etc.).

c. All fires must be completely extinguished when the fire will be left unattended or when the activity for which the fire was intended is done, whichever occurs first.

d. Any person(s) responsible for unlawful outdoor burning must immediately and completely extinguish the fire. If the person(s) responsible for unlawful outdoor burning are unable or unwilling to extinguish an unlawful fire, they may be charged for fire suppression costs incurred by a fire protection agency.

8. Distances. (WAC 173-425-050 (6)(b) & WAC 173-425-060(4))

a. All fires subject to Section 6.01 of this Regulation must be at least 50 feet away from any structure.

b. When material is burned on the ground, it must be placed on bare soil, green grass, or other similar area free of flammable materials for a distance adequate to prevent escape of the fire.

9. Landowner Permission. (WAC 173-425-050 (6)(c))

Permission from a landowner, or owner's designated representative, must be obtained before outdoor burning on landowner's property.

10. Burn Hours. (WAC 173-425-060(4))

All burning must take place during daylight hours only. Burning shall not commence prior to sunrise, and all debris burning must be completely extinguished at least one hour

prior to sunset. Smoke visible from burning within one hour of sunset will constitute prima facie evidence of unlawful burning.

11. Number of Piles. (WAC 173-425-060 (5)(c)(x))

Only one pile at a time may be burned per contiguous property under same ownership and each pile must be extinguished before lighting another.

12. Fuel Area. (WAC 173-425-060(4))

The fuel area shall be no larger than 3 feet in diameter by 2 feet in height.

13. Written Permits.

a. A copy of the written permit must be kept at the permitted burn site during the permitted burn, and must be made available for review upon request of the permitting agency.

b. All conditions of a written permit issued by the permitting agency must be complied with.

14. Property Access. (RCW 70.94.200 & SRCAA Regulation I, Article II)

The Control Officer, or duly authorized representative, shall be allowed to access property at reasonable times to inspect fires specific to the control, recovery, or release of contaminants into the atmosphere in accordance with SRCAA Regulation I, Article II and RCW 70.94.200. For the purposes of outdoor burning, reasonable times include, but are not limited to, any of the following: when outdoor burning appears to be occurring, when the Control Officer or authorized representative is investigating air quality complaints filed with SRCAA, and/or there is reason to believe that air quality violations have occurred or may be occurring. No person shall obstruct, hamper, or interfere with any such inspection.

15. Areas Prohibited. (WAC 173-425-040)

Outdoor burning is prohibited in all of the following areas:

a. Within the Restricted Burn Area (also referred to as the No Burn Area), as defined by Resolution of the Board of Directors of SRCAA.

b. Within any Urban Growth Area (land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.030), and with the exception of Fairchild Air Force Base, any area completely surrounded by any Urban Growth Area (e.g. "islands" of land within an Urban Growth Area).

c. Within any nonattainment area or former nonattainment area.

d. In any area where a reasonable alternative to burning exists for the area where burning is requested. For burning organic refuse, a reasonable alternative is considered one where there is a method for disposing of the organic refuse at a cost that is less than or equivalent to the median of all county tipping fees in the state for disposal of municipal solid waste. SRCAA shall determine the median of all county tipping fees in the state for disposal of municipal solid waste by obtaining the most recent solid waste tipping fees data available from Ecology (e.g. state profile map of Washington solid waste tipping fees available at <https://fortress.wa.gov/ecy/swicpublic>) or other relevant sources. Reasonable alternatives may include, but are not limited to, solid waste curbside pick-up, on-site residential composting or commercial composting operations, public or private chipping/grinding

operations, public or private chipper rental service, public or private hauling services, energy recovery or incineration facility, public or private solid waste drop box, transfer station, or landfill.

16. Other Requirements.

All outdoor burning must comply with all other applicable local, state, and federal requirements.

G. Unlawful Outdoor Burning.

a. Failure of any person to comply with Chapter 70.94 RCW, Chapter 173-425 WAC, this Section, or permit conditions, shall be unlawful and may result in criminal or civil enforcement action taken, including penalties.

b. Unlawful burning may result in any outdoor burning permit being permanently rescinded. This applies to written permits, general permits (permits by rule), and electronic and verbal permits. Once rescinded, approval from SRCAA must be obtained to burn again. Applicable fees for a new permit must be paid pursuant to Section 10.13.

Reviser's note: The unnecessary underscoring 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.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of Spokane Regional Clean Air Agency (SRCAA) Regulation I, Article VI, is repealed:

SECTION 10.13 OUTDOOR BURNING PERMIT FEES

NEW SECTION

SECTION 10.13 OUTDOOR BURNING WAITING PERIOD AND FEES

An outdoor burning permit application must be completed and submitted to SRCAA pursuant to Section 6.01 of this Regulation. Incomplete applications, including applications not received with the applicable fee, will be returned to the applicant.

A. Advance Application Period.

A complete and accurate application must be received by SRCAA in advance of the first proposed burn date by the number of working days specified in the table below.

Type of Outdoor Burning	Working Days
Social Event Fires (Sect. 6.01.D.9)	10
Storm or Flood Debris Burning (Sect. 6.01.D.10)	10
Types of Other Outdoor Burning Not Listed in Section 6.01.D (Sect. 6.01.D.13)	10

B. Permit Application Fees.

1. Flat Fees.

The application shall be accompanied by the full fee as specified in the outdoor burning fee schedule. The fee shall be paid regardless of whether or not burning is conducted under an approved permit. If a permit is denied, the applicant

may request a refund for the fee paid less the nonrefundable fee as specified in the outdoor burning fee schedule.

2. Hourly Fees.

For hourly fees, the application shall be accompanied by a minimum nonrefundable fee as specified in the outdoor burning fee schedule. A billing invoice will be sent to the applicant for time spent reviewing the outdoor burning application, determining if it is complete, following up with the applicant as necessary, performing a site inspection (including travel time), and issuing a permit or denying the permit. For hourly fees, the entire fee assessed on the billing invoice is nonrefundable.

WSR 13-16-101
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed August 7, 2013, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-20-076.

Title of Rule and Other Identifying Information: The department is amending chapter 388-106 WAC, specifically WAC 388-106-0010 and 388-106-0130.

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 September 24, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 25, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 24, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 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 and clarifying rules to revise the assessment process for allocating personal care hours as a result of the Washington state supreme court decision in *Samantha A. v. Department of Social and Health Services*.

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 necessary because of state court decision, *Samantha A. v. DSHS*.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2495.

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.

July 31, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-22-043, filed 10/27/11, effective 11/27/11)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood((-)): At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet((-));

(e) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Activities of daily living (ADL)" means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation;

or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a (~~boarding home~~) contracted assisted living, adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or get in/out of a vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

"Age appropriate" Proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a summary of information that the department entered into the CARE assessment describing your needs.

"Assessment or reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

"Assistance available" means the amount of (~~informal support~~) assistance available for a task if (~~the need~~) status is coded:

(a) Partially met due to availability of other support; or

(b) Shared benefit. The department determines the amount of the assistance available using one of four categories:

~~((a))~~ (i) Less than one-fourth of the time;

~~((b))~~ (ii) One-fourth to one-half of the time;

~~((c))~~ (iii) Over one-half of the time to three-fourths of the time; or

~~((d))~~ (iv) Over three-fourths but not all of the time.

"Assistance with body care" means you need assistance with:

(a) Application of ointment or lotions;

(b) Trimming of toenails;

(c) Dry bandage changes; or

(d) Passive range of motion treatment.

"Assistance with medication management" means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are (~~a person~~) an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections. (~~Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.~~)

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibil-

ity for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC ((388-511-1105)) 182-500-0015 by the division of disability determination services of the medical assistance administration.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC ((388-475-0100)) 182-512-0010 and chapter ((388-513)) 182-513 WAC.

"Child" means an individual less than eighteen years of age.

"Chronic care management" means programs that provide care management and coordination activities for medical assistance clients receiving long-term care services and supports determined to be at risk for high medical costs.

"Health action plan" means an individual plan which identifies health-related problems, interventions and goals.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

(a) Whether the behavior is easily altered or not easily altered; and

(b) The frequency of the behavior.

"Decision making" means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

(e) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Department" means the state department of social and health services, aging and disability ((services)) administration or its designee.

"Designee" means area agency on aging.

"Developmental milestones table" is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

"Disability" is described under WAC 182-500-0025.

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter ((388-527)) 182-527 WAC.

"Home health agency" means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC ((388-500-0005)) 182-509-0001.

"Individual provider" means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

~~((("Disability" is described under WAC 388-511-1105.))~~

"Informal support" means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older. Examples of informal supports include but are not limited to: family members, friends, housemates/roommates, neighbors, school, child-care, after school activities, adult day health, church or community programs.

"Institution" means medical facilities, nursing facilities, and institutions for the ~~((mentally retarded))~~ intellectually disabled. It does not include correctional institutions. See medical institutions in WAC ((388-500-0005)) 182-500-0050.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the aging and disability services (~~(administration)~~) and identified in WAC 388-106-0015.

"Medicaid" is defined under WAC (~~(388-500-0005)~~) 182-500-0070.

"Medically necessary" is defined under WAC (~~(388-500-0005)~~) 182-500-0070.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

- (a) The design, delivery and evaluation of services and supports;
- (b) Exercising control of decisions and resources, making their own decisions about health and well being;
- (c) Determining how to meet their own needs;
- (d) Determining how and by whom these needs should be met; and
- (e) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC (~~(388-500-0005)~~) 182-500-0085.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract or licensed (~~(boarding home)~~) assisted living facility under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self performance for ADLs" means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activ-

ity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

- (i) You were not able (e.g., walking, if paralyzed);
- (ii) No provider was available to assist; or
- (iii) You declined assistance with the task.

"Self performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

"Shared benefit" means:

(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

"SSI-related" is defined under WAC ((388-475-0050) 182-512-0050).

"Status" means the ~~((amount))~~ level of ~~((informal support))~~ assistance available for a task from informal supports: the shared benefit that a care provider may derive from doing a task for a client or that two or more clients derive from the same IADL being performed and the determination of whether a child's need for assistance is due primarily to his or her age. The department determines ~~((whether))~~ the status of each ADL or IADL ~~((is))~~ and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; ~~((or))~~

(d) Shared benefit, which means:

(i) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(ii) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

(e) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

(f) Client declines, which means you do not want assistance with the task.

"Supplemental Security Income (SSI)" means the federal program as described under WAC ((388-500-0005) 182-500-0100).

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 11-11-024, filed 5/10/11, effective 6/10/11)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will ~~((deduct from the))~~ adjust base hours to account for informal supports, shared benefit, and age appropriate functioning (as those terms are defined in WAC 388-106-0010), ~~((or))~~ and other paid services that meet some of an individual's need for personal care services, including adult day health, as follows:

(a) The CARE tool determines the adjustment for status and assistance available of informal supports ~~((by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:))~~ , shared benefit, and age appropriate functioning. A numeric value is assigned to the status and/or assistance available coding for ADLs and IADLS based on the table below. The base hours assigned to each classification group are adjusted by the numeric value in subsection (b) below.

Meds	((Self Performance))	Status	Assistance Available	<u>Numeric Value</u> ((Percentage))
<p>((Self administration of medications)) Medication Management <u>The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying ADL.</u></p>	<p>((Rules for all codes apply except independent is not counted))</p>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	N/A	0
		Partially met	<1/4 time	.9
1/4 to 1/2 time	.7			
1/2 to 3/4 time	.5			
>3/4 time	.3			
Unscheduled ADLs	((Self Performance))	Status	Assistance Available	<u>Value</u> ((Percentage))
<p>Bed mobility, transfer, walk in room, eating, toilet use <u>The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider= 1; Did not occur/client declined and independent are not counted as qualifying ADLs</u></p>	<p>((Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.))</p>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	N/A	0
		Partially met	<1/4 time	.9
1/4 to 1/2 time	.7			
1/2 to 3/4 time	.5			
>3/4 time	.3			
Scheduled ADLs	((Self Performance))	Status	Assistance Available	<u>Value</u> ((Percentage))
<p>Dressing, personal hygiene, bathing <u>The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider= 1; Did not occur/client declined and independent which are not counted as qualifying ADLs</u></p>	<p>((Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.))</p>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	N/A	0
		Partially met	<1/4 time	.75
1/4 to 1/2 time	.55			
1/2 to 3/4 time	.35			
>3/4 time	.15			
IADLs	((Self Performance))	Status	Assistance Available	<u>Value</u> ((Percentage))
<p>Meal preparation, Ordinary housework, Essential shopping <u>The rules to the right apply for all Self Performance codes except independent is not counted as a qualifying IADL</u></p>	<p>((Rules for all codes apply except independent is not counted.))</p>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Child under (age) (see subsection (7))</u>	N/A	0

		Partially met or Shared benefit	<1/4 time	.3
			1/4 to 1/2 time	.2
			1/2 to 3/4 time	.1
			>3/4 time	.05
IADLs	((Self Performance))	Status	Assistance Available	Value ((Percentage))
Travel to medical <u>The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying IADL</u>	((Rules for all codes apply except independent is not counted.))	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Child under (age) (see subsection (7))	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3
Key: > means greater than < means less than				

(b) To determine the amount ~~((of reduction))~~ adjusted for informal support, shared benefit and/or age appropriate functioning, the ~~((value percentages))~~ numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours ~~((reduced for informal supports))~~. Values are rounded to the nearest hundredths (e.g., .862 is rounded to .86).

~~(3) ((Also, the department will adjust in-home base hours when:~~

~~(a) There is more than one client receiving ADSA-paid personal care services living in the same household, the status~~

~~under subsection (2)(a) of this section must be met or partially met for the following IADLs:-~~

- ~~(i) Meal preparation;~~
- ~~(ii) Housekeeping;~~
- ~~(iii) Shopping; and~~
- ~~(iv) Wood supply.~~

~~(b) You are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.~~

~~(4)) Effective July 1, 2012, after ((deductions)) adjustments are made to your base hours, as described in ((subsections (2) and (3))) subsection (2), the department may add on hours based on ((your living environment)) offsite laundry, living more than forty-five minutes from essential services, and wood supply:~~

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done. <u>The status used for the rules to the right is for housekeeping.</u>	((N/A)) <u>Unmet</u>	N/A	8
	<u>Met</u>	<u>N/A</u>	<u>0</u>
	<u>Declines</u>	<u>N/A</u>	<u>0</u>
	<u>Child under (age) (see subsection (7))</u>	<u>N/A</u>	<u>0</u>
	<u>Partially met or Shared benefit:</u>	<u><1/4 time</u>	<u>8</u>

Condition	Status	Assistance Available	Add On Hours
		<u>between 1/4 to 1/2 time</u>	<u>6</u>
		<u>between 1/2 to 3/4 time</u>	<u>4</u>
		<u>>3/4 time</u>	<u>2</u>
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market). <u>The status used for the rules to the right is essential shopping.</u>	Unmet	N/A	5
	Met	N/A	0
	<u>Declines</u>	<u>N/A</u>	<u>0</u>
	<u>Child under (age) (see subsection (7))</u>	<u>N/A</u>	<u>0</u>
	<u>Partially met or Shared benefit</u>	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	((2)) <u>3</u>
>3/4 time		2	
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	<u>Child under (age) (see subsection (7))</u>	<u>N/A</u>	<u>0</u>
	<u>Partially met or Shared benefit</u>	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
>3/4 time		2	

~~((5))~~ (4) In the case of New Freedom consumer directed services (NFCDS), the department determines ~~(hours)~~ the monthly budget available as described in WAC 388-106-1445.

~~((6))~~ (5) The result of actions under subsections (2)~~(3)~~ and (3)~~(, and (4))~~ is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to ~~(meet)~~ address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

~~((7))~~ (6) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized) per WAC 388-106-0805.

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized) per WAC 388-106-0805.

(d) A home health aide ~~((if you are eligible))~~ (i.e., one hour from the available hours for each hour of home health aide authorized) per WAC 388-106-0300 ~~((or 388-106-0500)).~~

(e) A private duty nurse (PDN) if you are eligible per WAC ~~((388-71-0910 and 388-71-0915))~~ 388-106-1010 or WAC ~~((388-551-3000))~~ 182-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

(7) If you are a child applying for personal care services:

(a) The department presumes that children have legally responsible adults who provide support for the child's ADLs, IADLs and other needs. The department will not provide ser-

vices or supports that are within the range of activities that a parent or legally responsible adult would ordinarily perform on behalf of a child of the same age who does not have a disability or chronic illness.

(b) The department will complete a CARE assessment and use the developmental milestones tables below when assessing your ability to perform personal care tasks.

(c) Your status will be coded as age appropriate for ADLs when your self performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table in subpart (e), unless the circumstances in subpart (d) below apply.

(d) The department may code status as other than age appropriate for an ADL, despite your self performance falling within the developmental age range for the ADL on the developmental milestones table in subpart (e) below, if the department determines during your assessment that your level of functioning is related to your disability and not primarily due to your age and the frequency and/or the duration of assistance required for a personal care task is not typical for a person of your age.

(e)

Developmental Milestones for Activities of Daily Living (ADLS)		
ADL	Self-Performance	Developmental Age Range
<u>Medication Management</u>	<u>Independent</u> <u>Self-Directed</u> <u>Assistance Required</u>	<u>Birth through the 17th year</u>
	<u>Must Be Administered</u>	<u>Birth through the 11th year</u>
<u>Locomotion in Room</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through 12 months</u>
<u>Locomotion Outside Room</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 5th year</u>
	<u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through 24 months</u>
<u>Walk in Room</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through 18 months</u>
<u>Bed Mobility</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u>	<u>Birth through 36 months</u>
	<u>Extensive</u>	<u>Birth through 24 months</u>
	<u>Total</u>	<u>Birth through 18 months</u>
<u>Transfers</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 2nd year</u>
	<u>Total</u>	<u>Birth through 18 months</u>
<u>Toilet Use</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 6th year</u>
	<u>Total</u>	<u>Birth through 36 months</u>

Developmental Milestones for Activities of Daily Living (ADLS)		
<u>ADL</u>	<u>Self-Performance</u>	<u>Developmental Age Range</u>
<u>Eating</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 2nd year</u>
	<u>Total</u>	<u>Birth through 12 months</u>
<u>Bathing</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 11th year</u>
	<u>Physical help/Transfer only</u>	<u>Birth through the 4th year</u>
	<u>Physical help/part of bathing</u>	<u>Birth through the 5th year</u>
	<u>Total</u>	<u>Birth through 36 months</u>
<u>Dressing</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 11th year</u>
	<u>Limited</u>	<u>Birth through the 7th year</u>
	<u>Extensive</u>	<u>Birth through the 6th year</u>
	<u>Total</u>	<u>Birth through 24 months</u>
<u>Personal Hygiene</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 11th year</u>
	<u>Limited</u> <u>Extensive</u>	<u>Birth through the 6th year</u>
	<u>Total</u>	<u>Birth through 36 months</u>

(f) For IADLs, the department presumes that children typically have legally responsible parents or other responsible adults to assist with IADLs. Status will be coded as "child under (age)" the age indicated by the developmental milestones table for IADLs in subpart (h) unless the circumstances in subpart (g) below apply. (For example, a sixteen year old child coded as supervision in self-performance for telephone would be coded "child under eighteen.")

(g) If the department determines during your assessment that the frequency and/or the duration of assistance required is not typical for a person of your age due to your disability or your level of functioning, the department may code status as other than described in subpart (h) for an IADL.

(h)

Developmental Milestones for Instrumental Activities of Daily Living		
<u>IADL</u>	<u>Self-Performance</u>	<u>Developmental Age Range</u>
<u>Finances</u> <u>Telephone</u> <u>Wood Supply</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u> <u>Total</u>	<u>Birth through the 17th year</u>
	<u>Transportation</u>	<u>Birth through the 17th year</u>
	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	
	<u>Total</u>	<u>Birth through the 15th year</u>
	<u>Essential Shopping</u> <u>Housework</u> <u>Meal Prep</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>
	<u>Total</u>	<u>Birth through the 11th year</u>

(i) The department presumes that children have legally responsible parents or other responsible adults who provide

support for comprehension, decision-making, memory and continence issues. These items will be coded as indicated by

the additional developmental milestones table in subpart (k) unless the circumstances in subpart (j) below apply.

(j) If the department determines during your assessment that due to your disability, the support you are provided for comprehension, decision-making, memory and continence

issues is substantially greater than is typical for a person of your age, the department may code status as other than described in subpart (k) below.

(k)

Additional Developmental Milestones coding within CARE			
CARE panel	CARE coding topic	Developmental Milestone coding selection	Developmental Age Range
Speech/Hearing: Comprehension	"By others client is"	Child under 3	Birth through the 2nd year
Psych Social: MMSE	"Can MMSE be administered?"	=NO	Birth through the 17th year
Psych Social: Memory/Short Term	"Recent memory"	Child under 12	Birth through the 11th year
Psych Social: Memory/Long Term	"Long Term memory"	Child under 12	Birth through the 11th year
Psych Social: Depression	"Interview"	Unable to obtain	Birth through the 11th year
Psych Social: Decision Making	"Rate how client makes decision"	Child under 12	Birth through the 11th year
Bladder/Bowel:	"Bladder/Bowel Control"	Continent Usually Continent Occasionally Incontinent	Birth through the 11th year
		Frequently Incontinent	Birth through the 8th year
		Incontinent all or most of the time	Birth through the 5th year
Bladder/Bowel:	"Appliance and programs"	Potty Training	Birth through the 3rd year

(8) If you are a child applying for personal care services and your status for ADLs and IADLs is not coded per the developmental age range indicated on the milestones tables under subsection (7), the department will assess for any informal supports or shared benefit available to assist you with each ADL and IADL. The department will presume that children have legally responsible parents or other responsible adults who provide support to them.

(a) The department will code status as met if your assessment shows that your need for assistance with a personal care task is fully met by informal supports.

(b) The department will presume that you have informal supports, defined in WAC 388-106-0130, available to assist you with your ADLs and IADLs over three-fourths but not all of the time. This presumption may be rebutted if you provide specific information during your assessment to indicate why you do not have support available three-fourths or more of the time to assist you with a particular ADL or IADL.

(c) Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

(d) When you are living with your legally responsible parent(s), the department will take into account their legal obligation to care for you when determining the availability of informal supports. Legally responsible parents include natural parents, step-parents, and adoptive parents. Generally, a

legally responsible parent will not be considered unavailable to meet your personal care needs simply due to other obligations such as work or additional children because such obligations do not decrease the parent's legal responsibility to care for you regardless of your disabilities. However, the department will consider factors that cannot reasonably be avoided and which prevent a legally responsible parent from providing for your personal care needs when determining the amount of informal support available to you.

WSR 13-17-003

PROPOSED RULES

SEATTLE COMMUNITY COLLEGES

[Filed August 7, 2013, 1:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-23-032.

Title of Rule and Other Identifying Information: Policy on the use of the college facilities, limitation of use and trespass, amending WAC 132F-136-030 and 132F-136-050; use of facilities for first amendment activities (new chapter 132F-142 WAC).

Hearing Location(s): Seattle Central Community College, Broadway Performance Hall, 1625 Broadway, Seattle, WA 98122, on October 22, 2013, at 3:00 p.m. to 4:00 p.m.

Date of Intended Adoption: November 14, 2013.

Submit Written Comments to: Amanda Davis Simpfenderfer, 1500 Harvard Avenue, Seattle, WA 98122, e-mail amanda.simpfenderfer@seattlecolleges.edu, fax (206) 934-3894, by October 22, 2013, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Amanda.simpfenderfer@seattlecolleges.edu by October 20, 2013, (206) 934-3873.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update and creation of new policies regarding the usage of the Seattle Community Colleges for first amendment activities on campus. The changes outline how the campus can be used for first amendment activities.

Reasons Supporting Proposal: To ensure that Seattle Community Colleges are upholding first amendment rights while respecting the educational process and amending the trespass rule to provide for administrative review.

Statutory Authority for Adoption: RCW 28B.50-.140(13).

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Seattle Community College District VI, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kurt Buttlerman, Seattle Community College District Office, (206) 934-4111.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules are not predicted to impose any costs on businesses or an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The Seattle Community Colleges are not required to provide a cost-benefit analysis under RCW 34.05.328 (5)(a).

August 7, 2013

Jill Wakefield

Chancellor

AMENDATORY SECTION (Amending WSR 12-12-010, filed 5/24/12, effective 6/24/12)

WAC 132F-136-030 Limitation of use. (1) Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, research, or public service programs.

(2) ~~((In general, the))~~ College facilities ~~((of the college shall not))~~ may be rented to ~~((, or used by,))~~ private or commercial organizations or associations ~~((, nor))~~ but shall ~~((the facilities))~~ not be rented to persons or organizations conducting programs for private gain.

(3) ~~((College facilities may not be used for commercial sales, advertising, or promotional activities except when such activities clearly serve educational objectives (as in display~~

~~of books of interest to the academic community or in the display or demonstration of technical or research equipment) and when they are conducted under the sponsorship or at the request of a college department, administrative office or student organization.~~

~~(4) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities.~~

~~(5) Activities of commercial or political nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside rooms or facilities to which access has been granted.~~

~~(6))~~ College facilities are available to recognized student groups, subject to these general policies and to the rules and regulations of the college governing student affairs.

~~((7) Handbills, leaflets, and similar materials except those which are commercial, obscene, or unlawful in character may be distributed only in designated areas on the campus where, and at times when, such distribution shall not interfere with the orderly administration of the college affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer and regulated by established guidelines shall not be construed as support or approval of the content by the college community or the board of trustees.~~

~~(8) Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs as determined by the appropriate administrative officer.~~

~~(9))~~ (4) No person or group may use or enter onto college facilities having in their possession firearms, even if licensed to do so, except commissioned police officers as prescribed by law.

~~((10) The right of peaceful dissent within the college community shall be preserved. The college retains the right to insure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is an illegitimate means of dissent. Should any person, group or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.~~

~~(11) Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises. However, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits.~~

~~(12) Peaceful picketing and other orderly demonstrations are permitted in public areas and other places set aside for public meetings in college buildings. Where college space is used for an authorized function, such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities, groups must obey or comply with directions of the designated administrative officer or individual in charge of the meeting.~~

~~(13) If a college facility abuts a public area or street, and if student activity, although on public property, unreasonably~~

~~interferes with ingress and egress to college buildings, the college may choose to impose its own sanctions although remedies might be available through local law enforcement agencies.~~

~~(14) College and noncollege groups may use the campus for first amendment activities between the hours of 6:00 a.m. and 10:00 p.m. and the colleges and their campuses are not open to the public except during these times.~~

~~(15) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.)~~

AMENDATORY SECTION (Amending WSR 12-12-010, filed 5/24/12, effective 6/24/12)

WAC 132F-136-050 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate the district's rules, or whose conduct threatens the safety or security of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or his or her designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW or Seattle Municipal Code 12A.08.040.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

(3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the ~~((manager of campus security))~~ vice-president of administration or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the ~~((manager of campus security))~~ vice-president of administration or designee will be the final decision of the college and should be issued within five work days.

Chapter 132F-142 WAC

USE OF FACILITIES FOR FIRST AMENDMENT ACTIVITIES

NEW SECTION

WAC 132F-142-010 Statement of purpose. The Seattle Community Colleges are educational institutions provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activ-

ities directly related to the educational mission of the colleges. The public character of the colleges does not grant to individuals the right to substantially interfere with, or otherwise disrupt the normal activities for and to which the colleges' facilities and grounds are dedicated. Accordingly, the colleges are designated public forums opened for the purposes recited herein and further subject to the time, place, and manner provisions set forth in these rules.

The purpose of the time, place and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the colleges' responsibility to fulfill their mission as state educational institutions of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The colleges recognize that college groups should be accorded the opportunity to utilize the facilities and grounds of the colleges to the fullest extent possible. The college intends to open its campus to noncollege groups to the extent that the usage does not conflict with the rights of college groups or substantially disrupt the educational process.

NEW SECTION

WAC 132F-142-020 Definitions. (1) "College facilities" or "campus" includes all buildings, structures, grounds, office space, and parking lots.

(2) "College group" means individuals who are currently enrolled students or current employees of the Seattle Community Colleges or individuals who are sponsored by faculty, a recognized student organization or a recognized employee group of the college.

(3) "Noncollege group" means individuals or groups who are not currently enrolled students or current employees of the Seattle Community Colleges.

(4) "Public forum areas" means those areas of each campus that the college has chosen to be open as places for expressive activities protected by the first amendment, subject to reasonable time, place or manner provisions.

(5) "Sponsor" means that when a college group invites a noncollege group onto campus, the college group will be responsible for the activity and will designate an individual to be present at all times during the activity. The sponsor will ensure that those participating in the sponsored activity are aware of the college's rules and policies governing the activity. This definition does not apply to noncollege groups that rent college facilities.

NEW SECTION

WAC 132F-142-030 Use of facilities. (1) There shall be no camping on college facilities or grounds between the hours of 10:00 p.m. and 6:00 a.m. Camping is defined to include sleeping, cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(2) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of

classrooms, offices or laboratories, or any previously scheduled college activity.

(3) College groups are encouraged to notify the campus public safety department no later than twenty-four hours in advance of an activity. However, unscheduled activities are permitted so long as the activity does not displace any other activities occurring at the college.

(4) All sites used for first amendment activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the activity. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

(5) All college and noncollege groups must comply with fire, safety, sanitation or special regulations specified for the activity.

(6) The activity must not be conducted in such a manner as to obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the college, college buildings or facilities, or college activities. The activity must not create safety hazards or pose safety risks to others.

(7) The activity must not substantially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The activity must not substantially infringe on the rights and privileges of college students, employees or invitees to the college.

(8) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department, office, or officially chartered student club.

(9) The activity must also be conducted in accordance with any other applicable college policies and rules, local ordinances, state, and federal laws.

NEW SECTION

WAC 132F-142-040 Additional requirements for noncollege groups. (1) College facilities may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities in accordance with the Seattle Community Colleges' rules.

(2) The college designates its grounds and outdoor spaces as the public forum area(s) for use by noncollege groups for first amendment activities on campus. Nothing in these rules prohibits noncollege groups from engaging in first amendment activities at open public meetings, subject to the requirements of RCW 42.30.050.

(3) Noncollege groups at North Seattle Community College and South Seattle Community College may use the public forum areas for first amendment activities between the hours of 6:00 a.m. and 10:00 p.m. and those colleges and their campuses are not open to the general public except during these times. Due to Seattle Central Community College's urban setting, there are no temporal restrictions on first

amendment activities at that college except as otherwise provided in these rules.

(4) Before engaging in first amendment activities, upon request by the college, all noncollege groups must report to campus security to sign in and notify the college of the noncollege group's presence on campus and to acknowledge receipt of these rules and to ensure that there are no scheduling conflicts. This notice does not involve any application or approval process, and therefore, the ability to use designated areas will not be denied unless they are already reserved for use by another group. This notice is intended to provide the college with knowledge of the noncollege group's presence on campus so that the college can notify the appropriate members of its staff whose services might be needed or impacted by the use of the designated area. When signing in, the individual or group must provide the following information:

(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the activity (hereinafter "the sponsoring organization"); and

(b) The name, address, and telephone number of a contact person for the sponsoring organization; and

(c) The date, time, and requested location of the activity; and

(d) The type of sound amplification devices to be used in connection with the activity, if any; and

(e) The estimated number of people expected to participate in the activity.

NEW SECTION

WAC 132F-142-050 Distribution of materials. Information may be distributed as long as it is not obscene or does not promote the imminent prospect of actual violence or harm. The distributor is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only on the grounds and outside spaces of the campuses.

WSR 13-17-016

PROPOSED RULES

BOARD FOR VOLUNTEER

FIREFIIGHTERS AND RESERVE OFFICERS

[Filed August 8, 2013, 3:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-21-075.

Title of Rule and Other Identifying Information: Chapter 491-04 WAC, Filing appeals.

Hearing Location(s): Thurston Co. FPD #8, 3506 Shincke Road N.E., Olympia, WA 98506, on October 10, 2013, at 6:00 p.m.

Date of Intended Adoption: October 10, 2013.

Submit Written Comments to: Brigette K. Smith, P.O. Box 114, Olympia, WA 98507, or in person at 605 11th Ave-

nue S.E., Suite #112, Olympia, WA 98501, e-mail bridgettes@bvff.wa.gov, fax (360) 586-1987, by September 27, 2013.

Assistance for Persons with Disabilities: Contact Brigitte K. Smith by September 27, 2013, TTY (360) 753-7318 or (877) 753-7318.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is necessary to lay out a procedure for filing an appeal of a local board or staff decision denying benefits to a participant. The board for volunteer firefighters and reserve officers (BVFF) currently has no rules for filing an appeal.

Reasons Supporting Proposal: Most other agencies have WACs outlining the procedure for filing an appeal of a decision. Because the BVFF does not have one, it is confusing for staff, constituents, and stakeholders to know what to do when an appeal is requested. This results in inconsistencies between appeals and increases the cost of hearing because of the time involved in explaining a process that is not documented anywhere.

Statutory Authority for Adoption: RCW 41.24.290(2).

Statute Being Implemented: Chapter 491-04 WAC.

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

Name of Proponent: BVFF, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Brigitte K. Smith, 605 11th Avenue, Suite #112, Olympia, WA 98501, (360) 753-7318; and Enforcement: BVFF, 605 11th Avenue, Suite #112, Olympia, WA 98501, (360) 753-7318.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule will not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The board's proposed WAC is not a significant rule of the specified governmental departments nor is it a rule that adopts, by incorporation or reference, federal or state statutes or rules from other state agencies. It is a rule that relates to only internal governmental operations that are not subject to violation by a nongovernmental party, thus negating the requirement.

August 8, 2013
Brigitte K. Smith
Executive Secretary

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 13-18 issue of the Register.

WSR 13-17-029
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed August 12, 2013, 11:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-051.

Title of Rule and Other Identifying Information: WAC 392-140-915 High poverty funding—Process and definition of eligible schools.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on September 25, 2013, at 10:00 a.m.

Date of Intended Adoption: September 26, 2013.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by September 25, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin by September 25, 2013, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 392-122-421 requires updating to clarify the eligibility requirements for districts that receive remote and necessary funding for one of their schools.

Statutory Authority for Adoption: RCW 28A.150.-290(1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T.J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

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.

August 12, 2013
Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 12-03-069, filed 1/12/12, effective 2/12/12)

WAC 392-140-915 High poverty funding—Process and definition of eligible schools. For the purposes of this section, an eligible school is one in which the free and reduced priced lunch percentage for students in grades K-6 exceeds fifty percent within the school building, and the school is not part of a district that receives any type of K-6 small school funding or the school does not receive remote and necessary funding. CEDARS data as of October of the previous school year will be used to determine school eligibility. If a school is determined to be eligible, the K-3 full-time equivalent enrollment as reported to the office of superintendent of public instruction on the P-223 will be used to generate funding at an enhanced class size as determined by the legislature.

A preliminary CEDARS extract of October data will be pulled on March 31st to be used to determine a preliminary list of eligible schools to be published in April. This list will

be used by districts as a basis for estimating the total eligible high poverty enrollment to be put into the F-203 for budgeting purposes. Districts will have until September 30th to make adjustments to this data before it is considered final for funding purposes.

A secondary CEDARS extract of October data will be pulled on July 30th. An updated list of eligible schools will be presented to districts in August.

On September 30th, the October CEDARS data for the previous school year will be considered final for K-3 high poverty funding purposes. A final data extract will be used to determine schools that are eligible for high poverty funding. Final determination of eligible schools for the current school year will be available in mid-October.

Funding of K-3 high poverty schools will be based upon budgeted K-3 enrollment in eligible high poverty schools as stated in a district's F-203 from September through December. Funding based on average annual full-time equivalent enrollment reported in final approved eligible schools will begin in January and continue through August.

WSR 13-17-030
WITHDRAWAL OF PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
[Filed August 12, 2013, 11:15 a.m.]

The Washington state criminal justice training commission is withdrawing WSR 13-13-061 filed on June 18, 2013. The proposed rule making for WAC 139-10-210 may be refiled at a later date.

Please call Sonja Hirsch at (206) 835-7372 if you have any questions.

Sonja Hirsch
Rules Coordinator

WSR 13-17-031
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed August 12, 2013, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-052.

Title of Rule and Other Identifying Information: WAC 392-122-421 Full-day kindergarten program—Definitions.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on September 25, 2013, at 10:30 a.m.

Date of Intended Adoption: September 26, 2013.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by September 25, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin by September 25, 2013, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 392-122-421, requires updating to align the poverty percentage definition with the change that was made previously to WAC 392-122-423.

Statutory Authority for Adoption: RCW 28A.150.-290(1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

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.

August 12, 2013
Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 09-11-018, filed 5/8/09, effective 6/8/09)

WAC 392-122-421 Full-day kindergarten program—Definitions. As used in WAC 392-122-420 through 392-122-426, the following definitions shall apply:

(1) Full-day kindergarten (FDK) means an approved program that is eligible for state-funded full-day kindergarten program as provided for in the annual state operating budget;

(2) Full-time equivalent (FTE) has the same meaning as defined in WAC 392-121-122 (1)(a);

(3) "Poverty percentage" means the percentage of a school building's kindergarten through grade 6 students who are eligible for the federal free and reduced price lunch (FRPL) as reported to OSPI for the prior school year October 1st CEDARS reporting.

WSR 13-17-032
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed August 12, 2013, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-050.

Title of Rule and Other Identifying Information: WAC 392-121-188 Instruction provided under contract.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on September 25, 2013, at 11:00 a.m.

Date of Intended Adoption: September 26, 2013.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by September 25, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin by September 25, 2013, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 392-121-188 requires updating to align with the personnel S275 reporting requirements.

Statutory Authority for Adoption: RCW 28A.150.-290(1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

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.

August 12, 2013
Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 12-17-111, filed 8/20/12, effective 9/20/12)

WAC 392-121-188 Instruction provided under contract. School districts have general authority to contract for the services of individuals to provide instruction, subject to applicable state and federal laws and local collective bargaining agreements. School districts also have authority to enter into interdistrict cooperative agreements for instructional services with other school districts under RCW 28A.225.250. However, when a school district contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the school district for state basic education funding, the requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the school district for state funding if the following requirements are met:

(1) The school district board of directors in accordance with RCW 28A.320.015 adopts a resolution that concludes it is in the best interest of the students to expand the options available by providing an appropriate basic education program pursuant to the contract and sets forth the rationale in support of the conclusion. A board adopted resolution is not

required for online courses purchased by the school district from an online provider approved by the superintendent of public instruction under RCW 28A.250.020;

(2) The school district retains full responsibility for compliance with all state and federal laws;

(3) The contractor complies with all relevant state and federal laws that are applicable to the school district;

(4) The contractor provides instruction free of sectarian or religious influence or control;

(5) The contractor charges the student no tuition for enrollment;

(6) Enrollment is voluntary;

(7) No student or person is unlawfully excluded from participation on the grounds of race, creed, color, national origin, sex, marital status, or presence of any sensory, mental, or physical handicap;

(8) Each student is enrolled in the school district reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;

(9) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section;

(10) The curriculum is approved by the district. District approval for online course curriculum is not required for online courses offered by an online provider approved by the superintendent of public instruction under RCW 28A.250.-020;

(11) The contractor provides enrollment reports to the school district that comply with this chapter;

(12) The contractor maintains and has available for audit or review by the school district, state, or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and financial data including all revenues and expenditures pertaining to the contract with the school district;

(13) As of October 1st, if a contractor certificated employee employed by a contractor other than an institution of higher education spends more than twenty-five percent of a full-time equivalent time with students for a given school district (~~(at any time during the school year)~~), the school district must report the individual contractor certificated employee as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;

(14) The school district and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the school district. School districts that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;

(15) The school district and contractor establish a process for periodic monitoring by the school district for compliance with this section and other terms of the contract between the school district and contractor. School districts that purchase online courses through the online course catalog pro-

vided by the office of superintendent of public instruction are exempt from this provision;

(16) Contracts for services for students with disabilities shall comply with WAC 392-172A-04085 and 392-172A-04090;

(17) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment, which is governed by chapter 392-169 WAC or at-risk programs meeting the standards of subsection (18) of this section; and

(18) Full-time equivalent enrollment reported for students served under contract with a community or technical college as defined in RCW 28B.50.030 shall be based on the credits generated by the student consistent with WAC 392-169-025 if the program meets the following standards:

(a) The student is earning credits applicable to a high school diploma.

(b) The program is focused on serving credit deficient students.

(c) The student population served is considered at-risk and meet the following criteria:

(i) The students have already dropped out of high school; or

(ii) The students have not demonstrated success in the traditional high school environment.

(19) The school district requires the contractor to clearly state in all of the contractor's advertising, publicity, or public statements regarding the contracted service that the service is being offered by the school district under contract.

sections of statute pertaining to off-road vehicles (wheeled all-terrain vehicles) violations, commercial motor vehicle learner's permit violations, vehicle license and registration fraud, and electric vehicle charging station parking violations.

Reasons Supporting Proposal: Updating the model traffic ordinance (MTO) will permit local governments to enforce the newly created sections of statute by reference through local traffic ordinances that adopt the MTO by reference.

Statutory Authority for Adoption: RCW 46.90.010.

Statute Being Implemented: RCW 46.90.010.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Julie Knittle, Highways-Licenses Building, Olympia, Washington, (360) 902-3763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

August 12, 2013

Damon Monroe

Rules Coordinator

WSR 13-17-035

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed August 12, 2013, 3:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-076.

Title of Rule and Other Identifying Information: Chapter 308-330 WAC, updating the model traffic ordinance to incorporate recent legislative changes.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on September 27, 2013, at 3:00 p.m.

Date of Intended Adoption: September 30, 2013.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 570-7048, by September 26, 2013.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by September 26, 2013, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules amend WAC 308-330-197, 308-330-309, 308-330-316, and 308-330-462 to incorporate references to newly created

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

WAC 308-330-197 RCW sections adopted—Off-road and nonhighway vehicles. The following sections of the Revised Code of Washington (RCW) pertaining to off road and nonhighway vehicles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.09.310, 46.09.330, 46.09.350, 46.09.360, 46.09.-420, 46.09.440, 46.09.450, 46.09.460, 46.09.470, 46.09.480, ((and)) 46.09.490, 2013 c 23 s 4, 2013 c 23 s 5, 2013 c 23 s 6, 2013 c 23 s 7, and 2013 c 23 s 9.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04, effective 9/27/04)

WAC 308-330-309 RCW sections adopted—Uniform Commercial Driver's License Act. The following sections of the Revised Code of Washington (RCW) pertaining to the Uniform Commercial Driver's License Act as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.25.010, 46.25.020, 46.25.030, 46.25.040, 46.25.050, 46.25.055, 46.25.057, 46.25.110, 46.25.120, ((and)) 46.25.170, and 2013 c 224 s 5.

AMENDATORY SECTION (Amending WSR 10-18-058, filed 8/30/10, effective 9/30/10)

WAC 308-330-316 RCW sections adopted—Vehicle lighting and other equipment. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle lighting and other equipment as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.395, 46.37.400, 46.37.410, 46.37.420, 46.37.4215, 46.37.4216, 46.37.423, 46.37.424, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.465, 46.37.467, 46.37.470, 46.37.480, 46.37.490, 46.37.495, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.518, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.37.620, 46.37.630, 46.37.640, 46.37.650, 46.37.660, 46.37.670, 46.37.671, 46.37.672, 46.37.673, 46.37.674, 46.37.675, ((and)) 46.37.680, and 2013 c 135 s 1.

AMENDATORY SECTION (Amending WSR 97-10-068, filed 5/5/97, effective 6/5/97)

WAC 308-330-462 RCW sections adopted—Stopping, standing, and parking. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle stopping, standing, and parking as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: 2013 c 60 s 1, RCW 46.61.560, 46.61.570, 46.61.575, 46.61.581, 46.61.582, 46.61.583, 46.61.585, 46.61.587, and 46.61.590.

WSR 13-17-059

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed August 15, 2013, 3:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-034.

Title of Rule and Other Identifying Information: 1. WAC 4-30-070 What are the experience requirements in order to obtain a CPA license? and 2. WAC 4-30-080 How do I apply for an initial individual CPA license?

Hearing Location(s): The Doubletree Hotel Seattle Airport, Cascade 12 Room, 18740 International Boulevard, SeaTac, WA, on October 17, 2013, at 9:00 a.m.

Date of Intended Adoption: October 17, 2013.

Submit Written Comments to: Richard C. Sweeney, Executive Director, P.O. Box 9131, Olympia, WA 98507-9131, e-mail info@cpaboard.wa.gov, fax (360) 664-9190, by October 10, 2013.

Assistance for Persons with Disabilities: Contact Jennifer Sciba by October 10, 2013, TTY (888) 833-6388 or (800) 833-6385 (teleBraille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To transfer "knowledge of the Public Accountancy Act and board rules" from the experience competencies currently contained in WAC 4-30-070 to 4-30-080. The proposal will amend WAC 4-30-080 to require applicants for an initial individual CPA license to complete a course covering the Washington Public Accountancy Act, related board rules, and board policies. Under the rule proposal, applicants for an initial Washington state CPA license will be required to complete a self-study course, the related test, and score at least ninety percent.

Reasons Supporting Proposal: The goal is to expose applicants to and ensure their knowledge of the Public Accountancy Act, board rules, and board policies. This knowledge is essential to impart a public responsibility orientation to new licensees.

Statutory Authority for Adoption: 1: RCW 18.04.-055(1), 18.04.105 (1)(d); 2: RCW 18.04.055, 18.04.105(1), 18.04.215(1).

Statute Being Implemented: 1: RCW 18.04.055(1), 18.04.105 (1)(d); 2: RCW 18.04.055, 18.04.105(1), 18.04.-215(1).

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

Name of Proponent: The Washington state board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Richard C. Sweeney, CPA, 711 Capitol Way South, Suite 400, Olympia, WA, (360) 586-0163.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not have more than minor economic impact on business.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.-328 (5)(a).

August 15, 2013
Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-070 What are the experience requirements in order to obtain a CPA license? (1) Qualifying experience may be obtained through the practice of public accounting and/or employment in industry or government. In certain situations, employment in academia may also provide experience to obtain some or all of the competency requirements. Qualifying experience may be obtained through one or more employers, with or without compensation, and may

consist of a combination of full-time and part-time employment.

(2) Employment experience should demonstrate that it occurred in a work environment and included tasks sufficient to have provided an opportunity to obtain the competencies defined by subsection (3) of this section and:

(a) Covered a minimum twelve-month period (this time period does not need to be consecutive);

(b) Consisted of a minimum of two thousand hours;

(c) Provided the opportunity to utilize the skills generally used in business and accounting and auditing including, but not limited to, accounting for transactions, budgeting, data analysis, internal auditing, preparation of reports to taxing authorities, controllership functions, financial analysis, performance auditing and similar skills;

(d) Be verified by a licensed CPA as meeting the requirements identified in subsection (5) of this section; and

(e) Be obtained no more than eight years prior to the date the board receives your complete license application.

(3) **Competencies:** The experience should demonstrate that the work environment and tasks performed provided the applicant an opportunity to obtain the following competencies:

~~(a) ((Knowledge of the Public Accountancy Act and related board rules applicable to licensed persons in the state of Washington;~~

~~(b))~~ Assess the achievement of an entity's objectives;

~~((e))~~ (b) Develop documentation and sufficient data to support analysis and conclusions;

~~((d))~~ (c) Understand transaction streams and information systems;

~~((e))~~ (d) Assess risk and design appropriate procedures;

~~((f))~~ (e) Make decisions, solve problems, and think critically in the context of analysis; and

~~((g))~~ (f) Communicate scope of work, findings and conclusions effectively.

(4) **The applicant's responsibilities:** The applicant for a license requesting verification is responsible for:

(a) Providing information and evidence to support the applicant's assertion that their job experience could have reasonably provided the opportunity to obtain the specific competencies, included on the applicant's Experience Affidavit form presented for the verifying CPA's evaluation;

(b) Producing that documentation and the completed Experience Affidavit form to a qualified verifying CPA of their choice;

(c) Determining that the verifying CPA meets the requirements of subsection (5) of this section; and

(d) Maintaining this documentation for a minimum of three years.

(5) **Qualification of a verifying CPA:** A verifying CPA must have held a valid CPA license to practice public accounting in the state of Washington or be qualified for practice privileges as defined in RCW 18.04.350(2) for a minimum of five years prior to verifying the candidate's experience, including the date that the applicant's experience is verified. The five years do not need to be consecutive.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-080 How do I apply for an initial individual CPA license? (1) To qualify to apply for an initial license you must meet the following criteria and requirements:

(a) Good character requirements of RCW 18.04.105 (1)(a);

(b) Education requirements of WAC 4-30-060;

(c) Examination requirements of WAC 4-30-062;

(d) ~~((Ethics course requirements by achieving and documenting))~~ Experience requirements of WAC 4-30-070;

(e) Achieve and document a passing grade of ninety percent or better on a course covering the complete content of the AICPA Code of Professional Conduct;

~~((e) Experience requirements of WAC 4-30-070; and))~~

(f) Achieve and document a passing grade of ninety percent or better on a board-approved initial course covering the Washington State Public Accountancy Act, related board rules, and board policies.

(2) If more than four years have lapsed since you passed the examination, you must meet the CPE requirements of WAC 4-30-134 ~~((+))~~ (2)(a) within the thirty-six month period immediately preceding submission of your license application. That CPE must include CPE hours in ethics and regulation ~~((applicable to the practice of public accounting in Washington state))~~ meeting the requirements of WAC 4-30-134~~((3))~~ (6). ~~((The))~~ This regulatory ethics portion of the combined one hundred twenty-hour CPE requirement must be completed within the six month period immediately preceding submission of your license application.

~~((2))~~ (3) You must provide the required information, documents, and fees to the board either by making application through the board's online application system or on a form provided upon request. You must provide all requested information, documents and fees to the board before the application will be evaluated.

~~((3))~~ (4) Upon assessment of your qualifications and approval of your application, your licensed status will be posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

~~((4))~~ (5) Your initial license will expire on June 30 of the third calendar year following initial licensure.

~~((5))~~ (6) You may not use the title CPA until the date the approval of your license is posted in the board's licensee data base and, therefore, made publicly available for confirmation.

WSR 13-17-064

PROPOSED RULES

DEPARTMENT OF

EARLY LEARNING

[Filed August 16, 2013, 8:59 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 170-295-3190 How can I be sure that the food I serve is safe?, revising rules related to safe food handling to be consistent with the new food handler guide released by the department of health (DOH).

Hearing Location(s): Department of Early Learning (DEL), State Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on October 1, 2013, at 12 p.m.

Date of Intended Adoption: Not sooner than October 1, 2013.

Submit Written Comments to: Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 407-1962, by October 1, 2013.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by September 24, 2013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending sections in DEL childcare licensing WAC chapters to update the provision for safe food handling. DOH has recently updated their food handlers guide, and DEL needs to reflect the updated requirements. This filing amends WAC 170-295-3190 How can I be sure that the food I serve is safe?

Reasons Supporting Proposal: The proposed rules are needed to update provisions of chapter 170-295 WAC to align them with recent DOH updates to their food handlers guide.

Statutory Authority for Adoption: Chapter 43.215 RCW. Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

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

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

August 16, 2013
Elizabeth M. Hyde
Director

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

WAC 170-295-3190 How can I be sure that the food I serve is safe? ~~((1) You need to develop and implement a system to monitor the temperature of potentially hazardous foods during cooking, reheating, cooling, storing, and hot and cold holding temperatures to be sure that:~~

~~(a) Food will be cooked to at least the minimum correct internal temperature;~~

~~(i) Ground beef and pork sausage 155 degrees Fahrenheit;~~

~~(ii) Pork 150 degrees Fahrenheit;~~

~~(iii) Fish and seafood 140 degrees Fahrenheit;~~

~~(iv) Poultry and stuffing 165 degrees Fahrenheit;~~

~~(v) Eggs 140 degrees Fahrenheit;~~

~~(vi) Beef (not ground) and lamb 140 degrees Fahrenheit.~~

~~(b) Previously prepared food is reheated one time only to an internal temperature of 165 degrees Fahrenheit within sixty minutes;~~

~~(c) Hot food is kept at a temperature of 140 degrees Fahrenheit or above until served;~~

~~(d) Cold food is kept at a temperature of 45 degrees Fahrenheit or less;~~

~~(e) Refrigerators have a thermometer in or near the door and are kept at 45 degrees Fahrenheit or less; and~~

~~(f) Freezers have a thermometer in or near the door and are kept at 10 degrees Fahrenheit or less.)) (1) Program staff must follow the safe preparation, cooking, and serving guidelines in the current edition of the food workers manual prepared by the state department of health.~~

(2) You must develop a system to record the temperature of each perishable food once it arrives from a satellite kitchen or a catering service. The system must include keeping records on site for six months with the following information:

(a) The name and the temperature of the food;

(b) The date and time the temperature was checked; and

(c) The name and signature or recognized initials of the person who is checking and recording the food temperatures.

(3) You may serve previously prepared food that has not been previously served if it was stored at the proper temperature for less than forty-eight hours after preparation. Leftover foods or open foods in the refrigerator must be labeled with the date that they were opened or cooked.

WSR 13-17-065

PROPOSED RULES

DEPARTMENT OF

EARLY LEARNING

[Filed August 16, 2013, 9:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-049.

Title of Rule and Other Identifying Information: WAC 170-297-7680 Safe food handling. Revising rules related to safe food handling to be consistent with the new food handler guide released by the department of health (DOH).

Hearing Location(s): Department of Early Learning (DEL), State Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on October 2, 2013, at 12 p.m.

Date of Intended Adoption: Not sooner than October 2, 2013.

Submit Written Comments to: Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 407-1962, by October 2, 2013.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by September 25, 2013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending sections in DEL childcare licensing WAC chapters to update the provision for safe food handling. DOH has recently updated their food handlers guide, and DEL needs to reflect the updated requirements. This filing amends WAC 170-297-7680 Safe food handling.

Reasons Supporting Proposal: The proposed rules update provisions of chapter 170-297 WAC to align them with recent DOH updates to their food handlers guide.

Statutory Authority for Adoption: Chapter 43.215 RCW.
Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

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

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

August 16, 2013
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 12-23-057, filed 11/19/12, effective 12/20/12)

WAC 170-297-7680 Safe food handling. (1) Program staff must follow the safe preparation, cooking, and serving guidelines in the current edition of the food workers manual prepared by the state department of health.

~~((a) Food must be served at temperatures of not less than one hundred thirty-five degrees Fahrenheit for hot foods and not more than forty-one degrees Fahrenheit for cold foods.~~

~~(b) All opened moist foods that have not been served must be covered, dated, and maintained at a temperature of forty-one degrees Fahrenheit or lower in the refrigerator or frozen in the freezer.~~

~~(c) Raw animal foods must be fully cooked to heat all parts of the food to a temperature and for a time of:~~

~~(i) One hundred forty-five degrees Fahrenheit or above for fifteen seconds for fish and meat;~~

~~(ii) One hundred sixty degrees Fahrenheit for fifteen seconds for chopped or ground fish, chopped or ground meat or raw eggs; or~~

~~(iii) One hundred sixty-five degrees Fahrenheit or above for fifteen seconds for poultry or stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, or stuffing containing fish meat or poultry.~~

~~(d) Potentially hazardous cooked foods must be cooled in an uncovered container, protected from cross contamination, and in a shallow layer of three inches or less in cooling equipment maintained at an ambient temperature of forty-one degrees Fahrenheit or less.~~

~~(2) Program staff must:~~

~~(a) Wash their hands prior to preparing food and after handling raw meats, poultry, or fish; and~~

~~(b) Not prepare food when ill with vomiting, diarrhea or infectious skin sores that cannot be covered.~~

~~(3)) (2) Previously prepared food may be served if:~~

~~(a) The food was not previously served; and~~

~~(b) It was stored at the proper temperature for less than twenty-four hours after preparation.~~

~~((4)) (3) Leftover foods or opened foods in the refrigerator must be labeled with the date that they were opened or cooked.~~

~~((5)) (4) Each staff person preparing or handling food must maintain a current Washington state department of health food worker's permit.~~

WSR 13-17-066

PROPOSED RULES DEPARTMENT OF EARLY LEARNING

[Filed August 16, 2013, 9:04 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 170-295 WAC, revising rules on communicable disease to align with recent department of health (DOH) changes to chapter 246-110 WAC.

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

Date of Intended Adoption: Not earlier than September 25, 2013.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by September 25, 2013.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by September 18, 2013, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align chapter 170-295 WAC with DOH changes to chapter 246-110 WAC by replacing references to "communicable disease" and replacing them with "contagious disease" and revising DEL's definition of "communicable disease" to refer to WAC 246-110-010.

Reasons Supporting Proposal: Rule making is necessary for the preservation of public health because DOH has amended its definition of communicable disease to eliminate diseases and add new ones, and to substitute the term "contagious" for "communicable." Alignment of DEL's licensing rules with these changes is necessary in order to ensure that providers know what diseases are identified concerns based

on the latest science, and to ensure they have clarity regarding terminology.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

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

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

August 16, 2013
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 12-09-060, filed 4/17/12, effective 5/18/12)

WAC 170-295-0010 What definitions under this chapter apply to licensed child care providers? "American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut, or other Alaska native and a member of an Alaskan native regional corporation or Alaska native village;

(2) Determined or eligible to be found Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;

(3) Considered to be Indian by a federally recognized or nonfederally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"**Anti-bias**" is an approach that works against biases and recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, gender, sexual orientation, class, religion, creed, disability, or age.

"**Capacity**" means the maximum number of children that a licensee is authorized to have on the premises of the child care at any one time.

"**Center**" means the same as "**child care center**."

"**Certification**" means department approval of a person, home, or facility that does not legally need to be licensed, but wants evidence that they meet the minimum licensing requirements (also see "**Tribal certification**").

"**Child abuse or neglect**" means the physical abuse, sexual abuse, sexual exploitation, abandonment or negligent treatment or maltreatment of a child by any person indicating the child's health, welfare, and safety is harmed.

"**Child-accessible**" means areas where children regularly have access such as: Entrances and exits to and from the center, classrooms or child care areas, playground area including equipment and fencing, parking areas, walkways, decks, platforms, stairs and any items available for children to use in these areas.

"**Child care center**" means the same as a "**child day care center**" or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.

"**Clean**" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing a surface.

"**CACFP**" means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).

"**Commercial kitchen equipment**" means equipment designed for business purposes such as restaurants.

"~~((Communicable))~~ **Contagious disease**" means ((a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, or mosquito) or environmental object (such as a table surface))) as provided in WAC 246-110-010.

"**Cultural relevancy**" creates an environment that reflects home cultures, communities and lives of children enrolled in the program.

"**Department**," "**we**," "**us**," or "**our**" refers to and means the state department of early learning (DEL) and its predecessor agency the department of social and health services (DSHS).

"**Developmentally appropriate practice**":

(1) Means that the provider should interact with each child in a way that recognizes and respects the child's chronological and developmental age;

(2) Is based on knowledge about how children grow and learn; and

(3) Reflects the developmental level of the individual child, and interactions and activities must be planned with the needs of the individual child in mind.

"**Director**" means the person responsible for the overall management of the center's facility and operation, except that "DEL director" means the director of the department of early learning.

"**Disinfect**" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents.

"**Domestic kitchen**" means a kitchen equipped with residential appliances.

"**External medication**" means a medication that is not intended to be swallowed or injected but is to be applied to the external parts of the body, such as medicated ointments, lotions, or liquids applied to the skin or hair.

"I," "you," and "your" refer to and mean the licensee or applicant for a child care license.

"Inaccessible to children" means stored or maintained in a manner preventing children from reaching, entering, or using potentially hazardous items or areas. Examples include but are not limited to: Quantities of water, sharp objects, medications, chemicals, electricity, fire, mechanical equipment, entrapment or fall areas.

"Individual plan of care" means that the center's health policies and procedures do not cover the needs of the individual child so an individual plan is needed. Examples may include children with allergies, asthma, Down syndrome, tube feeding, diabetes care such as blood glucose monitoring, or nebulizer treatments.

"Infant" means a child one-month through eleven months of age.

"Lead teacher" means the person who is the lead child care staff person in charge of a child or group of children and implementing the activity program.

"License" means a permit issued by the department authorizing a licensee by law to operate a child care center and certifying that the licensee meets the minimum requirements under licensure.

"Licensee" or **"you"** means the person, organization, or legal entity responsible for operating the center.

"Maximum potential capacity based on square footage" is the maximum number of children a licensee can be licensed for based on the amount of useable space (square footage) in the licensee's center. The licensee may be licensed for less than the maximum potential capacity. A licensee may not be licensed for more than the maximum potential capacity.

"Moisture impervious" or **"moisture resistant"** means a surface incapable of being penetrated by water or liquids.

"Nonexpiring license" or **"nonexpiring full license"** means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-295-0095.

"Parent" means birth parent, custodial parent, foster parent, legal guardian, those authorized by the parent or other entity legally responsible for the welfare of the child.

"Pesticides" means chemicals that are used to kill weeds, pests, particularly insects.

"Potentially hazardous food" means any food or ingredient that requires temperature control because it supports rapid growth of infectious or toxin forming microorganisms.

"Potable water" means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.

"Premises" means the building where the center is located and the adjoining grounds over which the licensee has control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Program supervisor" means the person responsible for planning and supervising the center's learning and activity program.

"Sanitize" means a surface must be clean and the number of germs reduced to a level that disease transmissions by

that surface are unlikely. This procedure is less vigorous than disinfection.

"Satellite kitchen" means a food service establishment approved by a local health jurisdiction where food is stored, prepared, portioned or packaged for service elsewhere.

"School-age child" means a child not less than five years through twelve years of age who has begun attending kindergarten or elementary school.

"Staff" means a child care giver or group of child care givers employed by the licensee to supervise children served at the center who are authorized by DEL to care for or have unsupervised access to children under chapter 170-06 WAC.

"Supervised access" refers to those individuals at a child care center who have no responsibility for the operation of the center and do not have unsupervised access to children. These individuals are not required to submit a background check form. This includes those persons on the premises for "time limited" activities whose presence is supervised by a center employee and does not affect provider/child ratios or the normal activities or routine of the center. Examples include:

(1) A person hired to present an activity to the children in care such as a puppet show, cooking activity, and story telling;

(2) Parent participation as part of a special theme; or

(3) A relative visiting a child on the premises.

"The Washington state training and registry system (STARS)" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy training requirement.

"Toddler" means a child twelve months through twenty-nine months of age.

"Terminal room cleaning" means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a ((communicable)) contagious disease before it is occupied by another person.

"Tribal certification" means that the department has certified the tribe to receive state payment for children eligible to receive child care subsidies.

"Unsupervised access" refers to those individuals at a child care center who can be left alone with children in the child care center. These individuals must have received a full background authorization clearance under chapter 170-06 WAC.

"Useable space" means the areas that are available at all times for use by the children that do not cause a health or safety hazard.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-1080 What topics must my new staff orientation include? You must have an orientation system in place to train each new employee and volunteer about program policies, practices, philosophies and goals. This training must include, but is not limited to, the program policies and practices listed in this chapter such as:

(1) Minimum licensing requirements;

(2) Planned daily activities and routines;

- (3) Child guidance and behavior management methods;
- (4) Child abuse and neglect prevention, detection, and reporting policies and procedures;
- (5) Health policies and procedures;
- (6) ((Communicable)) Contagious disease recognition and prevention;
- (7) Bloodborne pathogens;
- (8) Fire prevention, disaster plan and safety procedures;
- (9) Special health and developmental needs of the individual child;
- (10) Personnel policies, when applicable;
- (11) Limited restraint techniques;
- (12) Cultural relevancy; and
- (13) Age and developmentally appropriate practices and expectations for the age group the staff will work with.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-3010 What kind of health policies and procedures must I have? (1) You must have written health policies and procedures that are:

- (a) Written in a clear and easily understood manner;
- (b) Shared with all new staff during orientation;
- (c) Posted for staff and families to review; and
- (d) Reviewed, signed and dated by a physician, a physician's assistant or registered nurse when you change your policies and procedures or type of care that you provide, or at least every three years when you are due for relicensing. (For example, if you go from caring for children from twelve months and older to caring for infants, you must update your health policies and procedures and have them reviewed and signed.)
- (2) Your health policies and procedures must have information on how you plan to:
 - (a) Provide general cleaning of areas including but not limited to bathrooms, floors, walls, and doorknobs;
 - (b) Clean and sanitize areas including but not limited to food contact surfaces, kitchen equipment, diapering areas, toys, toileting equipment and areas, equipment that might be shared with several children such as sleep mats, cribs or high chairs;
 - (c) Prevent, manage and report ((communicable)) contagious diseases;
 - (d) Handle minor injuries such as nosebleeds, scrapes and bruises;
 - (e) Provide first aid;
 - (f) Screen children daily for illnesses;
 - (g) Notify parents that children have been exposed to infectious diseases and parasites;
 - (h) Handle minor illnesses;
 - (i) Handle major injuries and medical emergencies that require emergency medical treatment or hospitalization;
 - (j) Manage medication;
 - (k) Assist with handwashing and general hygiene including diapering and toileting;
 - (l) Handle food;
 - (m) Provide nutritious meals and snacks;
 - (n) Respond during any disasters;
 - (o) Care for children that may have special needs;

- (p) Care for infants and obtain infant nurse consultation (if licensed for four or more infants); and
- (q) Place infants to sleep on their backs to reduce the risk of sudden infant death syndrome (SIDS).
- (3) Your health policies and procedures must have information on when you plan to:
 - (a) Require ill children to stay home and for how long;
 - (b) Allow the ill child to return; and
 - (c) Call a parent to pick up their child and how you will care for the child until the parent arrives.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-3030 When is a child or staff member too ill to be at child care? (1) Your staff must check all children for signs of illness when they arrive at the center and throughout the day.

(2) You must exclude children and staff with the following symptoms from care:

- (a) Diarrhea (three or more watery stools or one bloody stool within twenty-four hours);
- (b) Vomiting (two or more times within twenty-four hours);
- (c) Open or oozing sores, unless properly covered with cloths or with bandages;
- (d) For suspected ((communicable)) contagious skin infection such as impetigo, pinkeye, and scabies: The child may return twenty-four hours after starting antibiotic treatment;
- (e) Lice or nits; and
- (f) Fever of 100 degrees Fahrenheit or higher and who also have one or more of the following:
 - (i) Earache;
 - (ii) Headache;
 - (iii) Sore throat;
 - (iv) Rash; or
 - (v) Fatigue that prevents participation in regular activities.

(3) Children and staff who have a reportable disease may not be in attendance at the child care center unless approved by the local health authority.

(4) You must not take ear or rectal temperatures. Oral temperatures can be taken for preschool through school age if single use disposable covers are used over the thermometer.

(5) When a child becomes ill or injured while in your care, you must:

- (a) Keep a confidential, individualized, written record in the child's file that includes the:
 - (i) Date of an illness or injury;
 - (ii) Treatment provided while in care; and
 - (iii) Names of the staff providing the treatment.
- (b) Provide a copy of the illness or injury report to the parent; and
- (c) Keep a current, written incident log listing date of illness or injury, the child's name, names of staff involved, and a brief description of the incident for tracking and analysis.
- (6) You must notify parents in writing when their children have been exposed to infectious diseases or parasites.

The notification may consist of either a letter to parents or posting a notification for parents in a visible location.

(7) You are a mandated disease reporter to the health department per WAC 246-101-415. You can obtain a list of reportable diseases, time frames for reporting and reporting phone numbers from your local health department.

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

WAC 170-295-7060 What injuries and illnesses or child abuse and neglect must I report? You or your staff must report immediately:

(1) A death or a serious injury or illness that requires medical treatment or hospitalization of a child in care must be reported by telephone and in writing to the parent, licensor, and child's social worker, if the child has a social worker;

(2) Any instance when you or your staff have reason to suspect the occurrence of any physical, sexual, or emotional child abuse or child neglect, child endangerment, or child exploitation as required under described in chapter 26.44 RCW. You may make a report by calling the statewide number at 1-800-562-5624 or 1-866-ENDHARM; and

(3) An occurrence of food poisoning or reportable (~~(communicable)~~) contagious disease, as required by the state board of health to the local public health department and to the licensor, by telephone.

WSR 13-17-067
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed August 16, 2013, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-025.

Title of Rule and Other Identifying Information: Chapter 170-296A WAC, revising rules on communicable disease to align with recent department of health (DOH) changes to chapter 246-110 WAC.

Hearing Location(s): Department of Early Learning (DEL), State Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on September 26, 2013, at 12 p.m.

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

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by September 26, 2013.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by September 19, 2013, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align chapter 170-296A WAC with DOH changes to chapter 246-110 WAC by replacing references to "communicable disease" and replacing them with "contagious disease" and revising DEL's definition of "communicable disease" to refer to WAC 246-110-010.

Reasons Supporting Proposal: Rule making is necessary for the preservation of public health because DOH has amended its definition of communicable disease to eliminate diseases and add new ones, and to substitute the term "contagious" for "communicable." Alignment of DEL's licensing rules with these changes is necessary in order to ensure that providers know what diseases are identified concerns based on the latest science, and to ensure they have clarity regarding terminology.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

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

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

August 16, 2013
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-2250 Reporting incidents to a child's parent or guardian and the department. The licensee must report to a child's parent or guardian and the department:

(1) Immediately:

(a) Any incident reported under WAC 170-296A-2200, after calling 911;

(b) Any incident reported under WAC 170-296A-2225, after calling 911 and Washington poison center;

(c) A child's demonstrated acts, gestures or behaviors that may cause serious intentional harm to self, others or property; or

(d) Use of physical restraint with a child.

(2) Within twenty-four hours:

(a) Their child's injury or other health concern that does not require professional medical treatment (report to parent only);

(b) Change in child care staff, including serious illness or incapacity of the licensee that may impact child care staffing;

(c) Additions to the household of persons sixteen years old or older;

(d) Change in the licensee's phone number or e-mail; or

(e) Their child's exposure to a (~~(communicable)~~) contagious disease from the list in WAC (~~(170-296A-3210)~~) 246-110-010; and

(3) The licensee's plans to move, as soon as the licensee plans to move. See WAC 170-296A-1475.

AMENDATORY SECTION (Amending WSR 12-21-050, filed 10/12/12, effective 11/12/12)

WAC 170-296A-3200 Health plan. The licensee must have a written health plan. The health plan must include:

- (1) ~~((Communicable))~~ **Contagious** disease procedures and exclusion of ill persons under WAC 170-296A-3210;
- (2) Immunization tracking under WAC 170-296A-3250 through 170-296A-3300;
- (3) Medication management under WAC 170-296A-3315 through 170-296A-3550;
- (4) Injury treatment under WAC 170-296A-3575 through 170-296A-3600;
- (5) Handwashing and hand sanitizers under WAC 170-296A-3625 through 170-296A-3675;
- (6) Caring for children with special health needs under WAC 170-296A-0050;
- (7) Cleaning, sanitizing, and disinfecting procedures;
- (8) A bloodborne pathogens plan under WAC 170-296A-1850; and
- (9) Notifying the health department when a licensee, staff person, volunteer, household member, or child in care is diagnosed with a notifiable condition as required under WAC 170-296A-2325.

AMENDATORY SECTION (Amending WSR 12-21-050, filed 10/12/12, effective 11/12/12)

WAC 170-296A-3210 ~~((Communicable))~~ Contagious disease procedure. (1) When the licensee becomes aware that he or she, a household member, staff person or child in care has been diagnosed with any of the ~~((following communicable diseases:~~

Disease:	Also known as:
Chickenpox	Varicella
Conjunctivitis (bacterial)	Pink eye
Diphtheria	
E. coli infection	
Giardiasis	
Hepatitis A virus	
Invasive haemophilus influenza disease (except otitis media)	
Measles	
Meningitis (bacterial)	Meningococcal meningitis
Mumps	
Pertussis	Whooping cough
Rubella	German measles
Salmonellosis	Salmonella or "food poisoning"

Disease:	Also known as:
Shigellosis	Shigella
Tuberculosis (active)	TB

~~(1))~~ **contagious diseases described in WAC 246-110-010,** the licensee must, within twenty-four hours notify:

- (a) The local health jurisdiction or DOH, except notice is not required for a diagnosis of chickenpox or conjunctivitis;
 - (b) The department; and
 - (c) Parents or guardians of each of the children in care.
- (2) The licensee must follow the health plan before providing care or before readmitting the household member, staff person or child into the child care.
- (3) The licensee's health plan must include provisions for excluding or separating a child, staff person, or household member with ~~((communicable))~~ **contagious** disease as described in ~~((subsection (1) of this section))~~ **WAC 246-110-010** or any of the following:
- (a) Fever of one hundred one degrees Fahrenheit or higher measured orally, or one hundred degrees Fahrenheit or higher measured under the armpit (axially), if the individual also has:
 - (i) Earache;
 - (ii) Headache;
 - (iii) Sore throat;
 - (iv) Rash; or
 - (v) Fatigue that prevents the individual from participating in regular activities.
 - (b) Vomiting that occurs two or more times in a twenty-four hour period;
 - (c) Diarrhea with three or more watery stools, or one bloody stool, in a twenty-four hour period;
 - (d) Rash not associated with heat, diapering, or an allergic reaction; or
 - (e) Drainage of thick mucus or pus from the eye.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4850 Pet/animal health and safety. Pets or other animals that have contact with children must:

- (1) Have current immunizations for ~~((communicable))~~ **contagious** diseases if applicable;
- (2) Show no signs of disease, worms or parasites; and
- (3) Be nonaggressive.

WSR 13-17-070
PROPOSED RULES
DEPARTMENT OF HEALTH
 [Filed August 16, 2013, 10:33 a.m.]

Original Notice.
 Preproposal statement of inquiry was filed as WSR 09-21-043.

Title of Rule and Other Identifying Information: Chapter 246-292 WAC, Waterworks operator certification, the department of health (DOH) is proposing to incorporate changes from SHB 1283 (chapter 221, Laws of 2009), clarify

the rule language, and update the rule to include department guidance and current program practices.

Hearing Location(s): DOH, 310 Israel Road S.E., Point Plaza East, Room 153, Tumwater, WA 98501, on September 27, 2013, at 10:00 a.m.

Date of Intended Adoption: October 8, 2013.

Submit Written Comments to: Brad Burnham, DOH, P. O. Box 47822, Olympia, WA 98504-7822, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2254, by September 27, 2013.

Assistance for Persons with Disabilities: Contact Brad Burnham by September 10, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to address statutory changes that better protect public health by establishing specific certification requirements for cross-connection control specialists and backflow assembly testers, incorporate long-standing guidance and current program practices, and clarify rule language and procedural requirements.

Reasons Supporting Proposal: The proposed rules are necessary to reflect the most recent changes to chapter 70.119 RCW pertaining to the department's authority to take enforcement actions for violations and clarify the department's authority to certify backflow assembly testers and cross-connection control specialists.

Statutory Authority for Adoption: RCW 70.119.050.

Statute Being Implemented: Chapter 70.119 RCW.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3147; Implementation and Enforcement: Chris McCord, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3137.

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

Small Business Economic Impact Statement

Section 1. What is the scope of the proposed rule package? The primary purpose of the proposed rule revision is to incorporate changes made to chapter 70.119 RCW from SHB 1283, chapter 221, Laws of 2009, Public water system operators, clarify federal requirements, incorporate DOH guidance, incorporate long-standing program practices, and clarify existing rule requirements and procedures.

The rule proposal affects certified operators, Group A public water systems, cross-connection control specialists (CCS), and backflow assembly testers (BAT).

Rule Revision Background: Revisions are needed to address statutory changes that affect the protection of public health, updates due to program operational changes and current program practices, incorporation of long-standing guidelines into the rule, and rule language clarification and procedure improvements.

1. **Statutory Changes:** The legislature adopted SHB 1283, to amend chapter 70.119 RCW. The bill:

- Strengthened the department's authority to take immediate enforcement actions in cases of gross negligence;
- Clarified the department's authority to certify BATs and CCSs;
- Amended the definition of a "Group A public water system" to be consistent with other related drinking water statutes;
- Added a definition of "operator" to include a BAT, certified operator, and CCS; and
- Added a reference to chapter 18.106 RCW for the specialty plumbers licensing requirements that cover some activities performed by BATs.

2. **Program Operational Changes:** The proposed revisions include program requirements that have been long-standing standard operating procedures, changes include:

- Addressing large public water system recruitment issues to allow broader substitution options for minimum education requirements;
- Adding duties for operators in responsible charge, and duties for CCSs and BATs;
- Revising temporary certification requirements for water treatment plant operators to increase public health protection for these high-risk water systems; and
- Adding minimum requirements for field test and inspection reports completed and submitted by BATs.

3. **Program Practices and Guidelines:** The waterworks operator program guideline (guideline) explains how to comply with the rule requirements for certified operators and Group A public water systems. The proposed revisions include requirements that have been long-standing guidelines and program practice:

- Moves and updates the definition of "available" into the duties of a certified operator section (WAC 246-292-032); and
- Updates most sections to clarify requirements using "plain language" from the guideline.

4. **Rule Clarification and Procedure Improvements:** The proposed revisions include plain language clarifications and procedural improvements:

- Clarifies roles and responsibilities of certified operators;
- Specifies requirements for BATs conducting backflow preventer inspections, field tests, maintenance, and reporting the results of such work;
- Modifying procedures and timelines for certification of operators;
- Clarifying existing requirements to make the rule easier to understand and use, reformatting tables to simplify information, and creating new rule sections; and
- Clarifying federal operator certification requirements.

Many requirements for Group A public water systems in chapter 246-290 WAC (Group A rule), obligate certified operators to perform specific functions even though the Group A rule does not directly regulate operators. The proposed revisions to this chapter adopt specific requirements from the Group A rule that apply specifically to certified

operators, such as cross-connection control, backflow prevention, and reporting requirements.

Section 2. Which businesses are impacted by the proposed rule package? What are their North American Industry Classification System (NAICS) codes? What is the minor cost threshold?

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of Businesses in Washington	Minor Cost Threshold = one percent of Average Annual Payroll
221310	Water supply and irrigation systems	147	\$1307
237110	Water and sewer line and related structures construction	342	\$8243

Section 3. What is the average cost per business of the proposed rule?

WAC 246-292-032 Duties of a certified operator in responsible charge. The proposal specifies that a certified operator in responsible charge must be available twenty-four hours per day, seven days per week, and able to take action within two hours of contact. Although the proposed rule requires the certified operator in responsible charge or the designee to respond within two hours of contact, it also provides flexibility to allow the operator to determine the "appropriate action." The proposed rule does not obligate a certified operator to be on-site at all times to resolve problems. A certified operator in responsible charge can direct other qualified staff, contractors, or other individuals to make necessary repairs or resolve problems to address an issue.

Costs: Under this section, some water systems will not incur additional costs. For example, their contract operator may be able to enlist individuals that live on the system to be available to complete selected tasks in their absence (such as turning off power or turning on an emergency generator). Other systems may enter into agreements with other systems to provide cross coverage (you cover for me, and I will cover for you). There will be some water systems; however, that will incur costs because they may elect to have staff "on-call" to comply with the proposed requirement. Based on results from a survey the department conducted (see Appendix B of the significant analysis), the probable costs under this scenario range between \$0 to \$432 per month for labor (\$0-\$5,184 annual), depending on the wage rates and union contract provisions.

WAC 246-292-034 Duties of a BAT.

The proposed rule clarifies the specific responsibilities of BATs in detail and proposes BATs meet the following proposed requirements:

- Be properly equipped and capable of using a field test kit, all tools and other equipment needed to conduct inspections and field tests;
- Use proper field test procedures that meet the requirements in WAC 246-290-490 (7)(d);
- Use field test kits meeting the standards established in the Manual of Cross-Connection Control published by

the University of Southern California (USC Manual), 10th Edition (2009); and

- Have field test kits evaluated, checked for accuracy, and calibrated at twelve month intervals according to the standards in the USC manual.

Costs: The equipment required to inspect and field test backflow preventers includes, at a minimum, a field test kit, including fittings and connectors, and other tools needed to inspect and field test backflow preventers. The cost of the field test kit meeting the standards in the USC Manual 10th Edition (2009) ranges from \$750 to \$1,000 for a basic analog model. The cost of the fittings and connectors could be an additional \$1,000. Annual verification and recalibration (if needed) costs are between \$75 and \$90. If a field test kit is found to be inaccurate and must be repaired, the most commonly required field test kit repair typically costs between \$40 and \$270. Even though the requirements are new, BATs have been incurring these costs as a standard business cost since purveyors require this as part of their quality assurance/quality control programs required by WAC 246-290-490.

Cost Category	Section 032 Availability	Section 034 BAT Equipment	Cost
Reporting			
Recordkeeping			
Training			
Professional Services (laboratory testing/repair)		\$0-\$360 annual cost	
Equipment (field test kit)		\$0-\$2000 one time cost	
Supplies (type, amount)			
Labor	\$0-\$432 per month (\$0-\$5,184 annual)		
Administration			
Lost Sales or Revenue			
Other			
Total Cost (annual and one time costs)			\$0-\$7,544

Section 4. Does the rule impose more than minor costs on impacted businesses?

Cost per business \$7,544

Minor cost threshold - 1% payroll \$1,307¹

¹ For the purposes of this analysis, the department's assumption is that water systems (and their customers) will ultimately be responsible for paying for the costs of the required actions. Therefore, the analysis uses the minor cost threshold for water supply and irrigation systems in this section.

Does the cost per business exceed the minor cost thresholds? Yes.

Section 5. Does the rule have a disproportionate impact on small businesses? The costs identified in Section 4 of this small business economic impact statement are

related to the size and complexity of the water system regardless of the type or size of the business (purveyor) that owns and operates the water system. Because of this, the department assumes the rules have a disproportionate impact on small businesses.

Section 6. Did we make an effort to reduce the impact of the rule?

A. Did we reduce, modify, or eliminate substantive regulatory requirements? Yes, the proposed rule does eliminate and modify existing regulatory requirements:

- The proposal eliminates the requirement for Class 1 treatment plants that serve fewer than 1,000 service connections to employ a basic treatment operator (BTO). Instead, the proposal allows a Class 1 treatment plant to employ a water treatment plant operator 1 (WTPO 1) to operate any system with a Class 1 rating. Eliminating this restriction will provide purveyors a larger candidate pool for employment. The proposal also provides a pathway to transition BTOs to become certified as a WTPO 1 without charging a fee for the transition.
- The proposal allows a purveyor to assign an operator in responsible charge at one level lower than the treatment plant or distribution system rating. In addition, the proposal allows a purveyor to assign an operator at one level lower than the operator in responsible charge. These two changes reduce labor costs to purveyors.

B. Did we simplify, reduce, or eliminate recordkeeping and reporting requirements? Yes, the proposed rules simplify and clarify recordkeeping and reporting requirements. Although the current rule does not require BATs to keep records and report results for inspecting and testing backflow preventers, BATs are currently required to perform these duties in accordance with the Group A rule. The proposal clarifies in detail the minimum requirements for recordkeeping and reporting. These requirements are identified in Section 036 to make it easier for a BAT to comply with the Group A rule requirements for recordkeeping and reporting.

C. Did we reduce the frequency of inspections? No. This proposed rule does not regulate the frequency of inspections.

D. Did we delay compliance timetables? No. This proposed rule does not regulate compliance timetables.

E. Did we reduce or modify fine schedules for non-compliance? No. This proposed rule does not modify fine schedules for noncompliance.

F. Did we create or implement any other mitigation techniques? The proposed rule includes the following additional mitigation measures:

- The department considered, but did not include in the proposed rule a requirement for electronic reporting of backflow preventer inspection and field test reports because of the cost to purveyors who do not have electronic systems in place.
- The proposed rule also allows experience to substitute for the minimum education requirement to reduce the educational cost to applicants to become a certified operator.

G. If you answered "no" for all the previous six questions, please explain why it is not "legal or feasible" to implement any of these mitigation techniques. Not applicable.

Section 7. Did we involve small businesses in the rule development process? To obtain cost estimates for the proposed changes, the department consulted the waterworks advisory committee (see Appendix A of the significant analysis) and other stakeholders to determine the probable costs. Department staff met with stakeholder groups representing:

- Small, medium, and large water systems;
- Certified operators from small, medium, and large water systems;
- CCSs;
- BATs;
- Satellite system management agencies; and
- Contract operators.

Throughout the rule-making process, the department gave several presentations to discuss the changes and get feedback from stakeholders (representing small, medium, and large businesses) at conferences and meetings at various locations across Washington for the following groups between fall 2009 and fall 2013.

Stakeholder Groups
American Water Works Association-Pacific Northwest Section Trustees & Cross-Connection Control Committee
Association of Boards of Certification
Association of Washington Cities/Counties
Certified operators, BATs, and CCCs
Evergreen Rural Water of Washington
Group A public water systems
Rural Community Assistance Corporation
Spokane Regional Cross-Connection Control Chapter
U. S. EPA – Region 10 (Alaska, Idaho, Oregon, and Washington)
Washington Association of Sewer and Water Districts
Washington Certification Services
Washington Environmental Training Center
Washington Operator Workshop
Washington Public Utility District Association
Washington Water Utility Council
Water and Wastewater Operators of Washington
Western Washington Cross-Connection Prevention Professionals (The Group)

Section 8. Will businesses have to hire or fire any employees because of the requirements in the rule? The department's analysis concludes that there may be jobs created as a result of the proposed rule.

A copy of the statement may be obtained by contacting Brad Burnham, DOH, P.O. Box 47822, Olympia, WA

98504-7822, phone (360) 236-3158, fax (360) 236-2252, e-mail brad.burnham@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Brad Burnham, DOH, P.O. Box 47822, Olympia, WA 98504-7822, phone (360) 236-3158, fax (360) 236-2252, e-mail brad.burnham@doh.wa.gov.

August 16, 2013

John Wiesman, DrPH, MPH
Secretary

Chapter 246-292 WAC

~~((WATER WORKS))~~ WATERWORKS OPERATOR CERTIFICATION

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-001 Purpose. ~~((Pursuant to the provisions of chapter 70.119 RCW,))~~ The purpose of this chapter is to protect public health by setting minimum requirements and standards for ~~((public water system operation and certification of operators in responsible charge of public water systems. Certification under this chapter is available to all operators who can meet the minimum qualifications of a given classification.))~~:

(1) Public water systems required to have a certified operator in responsible charge;

(2) Certified operators of public water systems;

(3) Certified operators that develop and implement cross-connection control programs; and

(4) Certified operators that inspect, field test, maintain, and repair backflow assemblies, devices, and air gaps that protect public water systems.

AMENDATORY SECTION (Amending WSR 05-06-122, filed 3/2/05, effective 4/2/05)

WAC 246-292-010 Definitions, abbreviations, and acronyms. ~~((Abbreviations and acronyms:~~

~~BAT—backflow assembly tester;~~

~~BTO—basic treatment operator;~~

~~CCS—cross connection control specialist;~~

~~GWI—groundwater under the direct influence of surface water;~~

~~NTNC—nontransient nonecommunity;~~

~~OIT—operator in training;~~

~~SMA—satellite management agency;~~

~~TNC—transient nonecommunity;~~

~~WAC—Washington Administrative Code;~~

~~WDM—water distribution manager;~~

~~WDS—water distribution specialist;~~

~~WTPO—water treatment plant operator;~~

"Available" means based on system size, complexity, and source water quality, a certified operator must be on-site or able to be contacted as needed to initiate the appropriate action in a timely manner. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Air gap" means a physical separation measured vertically between the lowest point of a free-flowing discharge end of a potable water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel.

(2) "Approved air gap" is defined in chapter 246-290 WAC.

(3) "Approved AVB (approved atmospheric vacuum breaker)" is defined in chapter 246-290 WAC.

(4) "Approved backflow preventer" is defined in chapter 246-290 WAC.

(5) "Approved backflow prevention assembly" is defined in chapter 246-290 WAC.

(6) "Authority having jurisdiction" means the local official, board, department, or agency authorized to administer and enforce the Uniform Plumbing Code adopted in chapter 19.27 RCW.

(7) "AVB (atmospheric vacuum breaker)" means a device that contains an air inlet, vent, air inlet valve, and check seat and is used to prevent backsiphonage backflow.

(8) "BAT (backflow assembly tester)" means an individual meeting the requirements of this chapter and certified under chapter 70.119 RCW to inspect, field test, maintain, and repair backflow prevention assemblies, devices, and air gaps that protect the public water system.

(9) "Backflow" means the reversal of flow of water or other substances through a cross-connection into the public water system or consumer's water system.

(10) "Backflow preventer" means a backflow prevention assembly, air gap, or AVB.

(11) "Backflow preventer inspection and field test" means the set of procedures and measurements performed by a BAT to evaluate a backflow preventer's approval status, installation, and performance to determine compliance with the requirements in WAC 246-290-490.

(12) "Backflow prevention assembly" means a mechanical backflow preventer designed for in-line testing and repair including, but not limited to:

(a) Reduced pressure backflow assembly;

(b) Reduced pressure detector assembly;

(c) Double check valve assembly;

(d) Double check detector assembly;

(e) Pressure vacuum breaker assembly; or

(f) Spill-resistant vacuum breaker assembly.

(13) "BTO (basic treatment operator)" means an individual meeting the requirements of this chapter and certified under chapter 70.119 RCW to perform routine on-site duties in a water treatment plant. BTO duties affect water treatment plant performance, public water system performance, water quality, water quantity, or public health protection.

(14) "CCS (cross-connection control specialist)" means an individual meeting the requirements of this chapter and certified under chapter 70.119 RCW to develop and implement a cross-connection control program.

(15) "Certificate" means a ((certificate of competency)) document issued annually by the department stating that the operator has met the requirements for ((the specified)) a specific certified operator classification ((of the certification program)) in WAC 246-292-060.

(16) "Certified operator" means ((a person who has met the applicable requirements of this chapter and holds)) an

individual meeting the requirements of this chapter, certified under chapter 70.119 RCW, and who has a valid certificate for one or more of the following classifications:

- (a) BAT;
- (b) BTO;
- (c) CCS;
- (d) WDS;
- (e) WDM; or
- (f) WTPO.

("Complex filtration technology" means conventional, direct, in-line or diatomaceous earth filtration.) (17) "CEU (continuing education unit)" means the nationally recognized measurement, similar to college credit, developed by IACET, in which one CEU is awarded for every ten contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

(18) "College credit" means a measurement that documents completion of educational courses earned toward a college degree from an accredited college or university.

(19) "Community water system" means any Group A public water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people, or regularly serving at least twenty-five year-round (i.e., more than one hundred eighty days per year) residents. ((Examples of a community water system might include a municipality, subdivision, mobile home park, apartment complex, college with dormitories, nursing home, or prison.

"Continuing education unit (CEU)" means a nationally recognized unit of measurement similar to college credits. One CEU is awarded for every ten contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction and qualified instruction. Forty-five relevant CEUs equals forty-five relevant college quarter credits or thirty relevant college semester credits as determined by the department.)

(20) "Consumer" means any person receiving water from a public water system from either the meter or the point where the service line connects with the distribution system if no meter is present. For purposes of cross-connection control, "consumer" means the owner or operator of a water system connected to a public water system through a service connection.

(21) "Consumer's premises" means a consumer's real property, any easement held by a consumer for the purpose of delivering the water to the consumer's real property, and all buildings and fixtures on the consumer's real property.

(22) "Consumer's water system" means any potable or industrial water system that begins at the point of delivery from the public water system and is located on the consumer's premises. The consumer's water system includes all auxiliary sources of supply, storage, treatment, and distribution facilities, piping, plumbing, and fixtures under the control of the consumer.

(23) "Contract operator" means a ((person in charge of the daily operational activities of)) certified operator who is approved by the department to operate three or more Group A public water systems.

(24) "Cross-connection control program" means the administrative and technical procedures the ((owner)) purveyor implements to protect the public water system from contamination via cross-connections as required in WAC 246-290-490.

(25) "Department" means the Washington state department of health((- through the secretary of health or the secretary's designee)).

(26) "Distribution system" means all piping components of a public water system that serve(s) to convey water from transmission mains linked to source, storage and treatment facilities to the consumer excluding individual services.

("Grandparenting" means the exemption for the existing operator in responsible charge from meeting the initial education, experience and examination requirements for the class of certification the system has been assigned.) (27) "GED" means the general educational development test of the American Council on Education.

(28) "Grandparented certification" means an operator certification granted before January 1, 2001, under which the department granted an exemption for the existing operator in responsible charge from meeting the initial education, experience and examination requirements for the public water system's assigned certification classification.

(29) "Gross negligence" means an act or omission performed or not performed in reckless disregard of a legal duty, or without even slight care. ((In considering whether an act or omission constitutes gross negligence, the department shall consider all relevant factors including, but not limited to:

- (1) The standard of care commonly exercised by operators;
- (2) Whether the legal duty was known or should have been known to the alleged violator; and
- (3) The degree to which the alleged violation endangered public health.

"Groundwater under the direct influence of surface water (GWI)" means any water beneath the surface of the ground with:

Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia; or

Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water condition.

"Group A water system" means a public water system providing service such that it meets the definition of a public water system provided in the 1996 amendments to the federal Safe Drinking Water Act (Public Law 104-182, Section 101, subsection b). Group A water systems are further defined as community and noncommunity water systems (see other definitions).

"Group B water system" means a public water system with less than fifteen residential connections and serving:

An average of less than twenty-five people per day for sixty or more days within a calendar year; or

Any number of people for less than sixty days within a calendar year.)

(30) "GWI (groundwater under the direct influence of surface water)" means any water beneath the surface of

the ground that the department determines has the following characteristics:

(a) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water conditions where natural conditions cannot prevent the introduction of surface water pathogens into the source at the system's point of withdrawal.

(31) **"IACET"** means the International Association for Continuing Education and Training.

(32) **"Major segment"** means a distinct portion of a public water system based on system size and complexity that a purveyor assigns to one or more certified operators in responsible charge.

(33) **"Nationally recognized association of certification authorities"** means an organization that:

(*) (a) Serves as an information center for certification activities;

(*) (b) Recommends minimum standards and guidelines for classification of potable water treatment plants, (water) distribution systems, (wastewater facilities) and certification of operators;

(*) (c) Facilitates reciprocity between a state or provincial program(s); and

(*) (d) Assists authorities in establishing new certification programs and updating existing (certification) programs.

(34) **"Noncommunity water system"** means a Group A public water system that is not a community water system. Noncommunity water systems are further defined as nontransient noncommunity ((NTNC)) and transient noncommunity ((TNC)).

(35) **"Nontransient noncommunity water system ((NTNC))"** means a Group A public water system that provides service opportunities to twenty-five or more of the same nonresidential people for one hundred eighty or more days within a calendar year. (Examples of a NTNC water system include a school or day care center, or a business, factory, motel or restaurant with twenty-five or more employees on-site.

"Owner" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity that holds as property, a public water system.)

(36) **"OIT (operator in training)"** means an individual with less than one year of operating experience meeting the requirements of this chapter and certified under chapter 70.119 RCW to perform routine on-site duties in a water treatment plant or distribution system.

(37) **"Operating experience"** means the routine (on-site) performance or management of duties (in a water purification plant or distribution system. Those duties affect plant or system performance and/or water quality):

(a) In a water treatment plant or distribution system; and

(b) That affect water treatment plant performance, distribution system performance, water quality, water quantity, or public health protection.

(38) **"Operating shift"** means ~~(that)~~ a designated period of time ~~(during)~~ in which a certified operator makes decisions ~~(are made)~~ and takes actions ~~(are taken)~~ that ~~(with)~~ directly impact drinking water quality ~~(and/or)~~, water quantity ~~(of drinking water)~~, or public health protection.

(39) **"Person"** means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(40) **"Premises isolation"** is defined in chapter 246-290 WAC.

(41) **"Professional growth reporting period"** means a designated ~~(time)~~ period of time not less than three years, in which a certified operator ~~(shall demonstrate)~~ completes the professional growth requirement in WAC 246-292-095.

~~("Public water system" means any system providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm. The term includes:~~

~~•Collection, treatment, storage, and/or distribution facilities under control of the owner and used primarily in connection with such systems; and~~

~~•Collection or pretreatment storage facilities not under control of the owner, but primarily in connection with such system.~~

~~"Purification plant" means that portion of a public water system that treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards. Unit processes installed to perform water filtration, ion exchange, electrodialysis, reverse osmosis, or iron and manganese removal shall be included within the scope of the term purification plant. Unit processes installed to allow in-line fluoridation, in-line chlorination, or chemical addition to inhibit corrosion are not included within the scope of the term purification plant.)~~ (42) **"Public water system (Group A public water system)"** means:

(a) A system with fifteen or more service connections, regardless of the number of people; or

(b) A system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections; and

(c) In addition, a Group A public water system is further defined in WAC 246-290-020.

(43) **"Purveyor"** means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system. Purveyor also means the authorized agents of these entities.

(44) **"Relevant excess education"** means science, applied science, or technology CEUs or college credits that exceed the minimum education required for certification in a specific certified operator classification. Example fields of study include, but are not limited to:

(a) Biology;

(b) Chemistry;

(c) Engineering;

(d) Geology; and

(e) Physics.

(45) **"Relevant water system training"** means training that directly relates to information and procedures that influence water quality, water quantity, or public health protection, including:

~~((1) Is approved by the department;~~

~~(2) Has an influence on water quality, water supply, or public health protection; and~~

~~(3) Is directly related to the)) (a) The operation(;) or maintenance activities of a public water system; or~~

~~((4) Is directly related to)) (b) Managing the operation or maintenance activities of a public water system. (Examples of acceptable management training include drinking water regulatory compliance, capacity development, rate setting, financial viability, water system security, and responding to drinking water emergencies.~~

"Responsible charge" means the operator(s) designated by the owner to be the certified operator(s) who makes the decisions regarding the daily operational activities of a public water system, water treatment facility and/or distribution system that will directly impact water quality and/or quantity of drinking water including, but not limited to, decisions concerning process control and system integrity.

"Satellite management agency (SMA)" means a person or entity that is approved by the department to own or operate public water systems on a regional or county-wide basis without the necessity for a physical connection between such systems.

"Service connection" means a connection to a public water system designed to provide water to a single family residence, or other residential or nonresidential population.

"**Significant noncomplier**" means a system that is violating or has violated department rules, and the violation may create, or has created an imminent or a significant risk to human health. Such violations include, but are not limited to, repeated violations of monitoring requirements, failure to address an exceedance of permissible levels of regulated contaminants, or failure to comply with treatment technique standards or requirements.)

(46) **"Responsible charge"** means the authority a purveyor grants to a certified operator to make decisions:

(a) That will directly impact water quality, water quantity, or public health protection of a public water system; and

(b) Regarding the daily operational activities, process control, or system integrity of a water treatment plant or distribution system.

(47) **"SMA (satellite system management agency)"** means a person that is approved by the department under chapter 246-295 WAC to own or operate more than one public water system on a regional or county-wide basis without the necessity for a physical connection between the systems.

(48) **"Surface water"** means a body of water open to the atmosphere and subject to surface runoff.

(49) **"Transient noncommunity ((FNC)) water system"** means a Group A public water system that serves:

(*) (a) Twenty-five or more different people each day for sixty or more days within a calendar year; or

(*) (b) Twenty-five or more of the same people each day for sixty or more days, but less than one hundred eighty days within the calendar year.

(50) **"USC"** means the University of Southern California.

(51) **"Validated ((exam)) examination"** means an ((exam)) examination that is independently reviewed by subject matter experts, to ((ensure)) verify that the ((exam)) examination is based on a job analysis ((and related to the classification of the system or facility)) and, where applicable, is related to the classification of a water treatment plant and distribution system.

(52) **"Water-related experience"** means experience:

(a) Operating a water treatment plant or distribution system;

(b) Working in water quality, water resources, or water infrastructure in a federal, state, county, local, or other governmental agency;

(c) Working in industrial water;

(d) Working in wastewater treatment; or

(e) Working as a consulting engineer or operations consultant in water quality, water resources, or water infrastructure.

(53) **"Water treatment plant"** means that portion of a public water system that treats or improves the physical, chemical, or microbial quality of the system's water to comply with water quality requirements in chapter 246-290 WAC.

(54) **"WDM (water distribution manager)"** means an individual meeting the requirements of this chapter and certified under chapter 70.119 RCW to perform or manage routine on-site duties in the distribution system of a public water system that serves more than two hundred fifty people. WDM duties affect the public water system performance, water quality, water quantity, or public health protection.

(55) **"WDS (water distribution specialist)"** means an individual meeting the requirements of this chapter and certified under chapter 70.119 RCW to perform or manage on-site duties in a distribution system of a public water system that serves two hundred fifty people or less. WDS duties affect public water system performance, water quality, water quantity, or public health protection.

(56) **"WFI (water facilities inventory)"** means the department form required in WAC 246-290-480(2) that summarizes a public water system's characteristics.

(57) **"WTPO (water treatment plant operator)"** means an individual meeting the requirements of this chapter and certified under chapter 70.119 RCW to perform or manage on-site duties in a water treatment plant. WTPO duties affect plant performance, public water system performance, water quality, water quantity, or public health protection.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-020 ((General)) Public water system requirements. (1) ((The following public water systems)) A purveyor shall designate ((the)) at least one certified operator((s)) in responsible charge ((of the daily operational activities of the public water system, water treatment facility,

and/or distribution system that will directly impact water quality and/or quantity of drinking water)) to meet the requirements of WAC 246-292-032 and as required ((under) in WAC 246-292-050((:

~~(a) Group A community or nontransient noncommunity (NTNC) systems; and~~

~~(b) Group A transient noncommunity (TNC) systems classified as significant noncompliers (SNCs); and~~

~~(c) Group A transient noncommunity (TNC) systems using a surface water or GWI source)) (1), (2), and (4), as applicable.~~

~~(2) ((Operator certification requirement-)) A purveyor may designate additional certified operators in responsible charge ((of the following public water systems or portions thereof shall be certified:~~

~~(a) Group A community and nontransient noncommunity (NTNC) systems;~~

~~(b) Group A transient noncommunity (TNC) systems classified as significant noncompliers (SNCs); and~~

~~(c) Group A transient noncommunity (TNC) systems using a surface water or GWI source.~~

~~(3) A designated certified operator shall be in responsible charge and available for each operating shift)) in accordance with WAC 246-292-050(3) when a purveyor has designated operating shifts and major segments.~~

~~(3) A purveyor shall designate and report mandatory certified operator in responsible charge positions to the department within thirty days of:~~

~~(a) Starting operations of a public water system; or~~

~~(b) When a mandatory certified operator in responsible charge position is vacated.~~

~~(4) The purveyor shall not require certified operators to perform an action or correction that is inconsistent with their experience, skills, abilities, or level of certification.~~

AMENDATORY SECTION (Amending WSR 05-06-122, filed 3/2/05, effective 4/2/05)

WAC 246-292-031 Duties of a certified operator ((duties)). (1) A certified operator shall:

~~((1) The certified operator shall)) (a) Operate the public water system with due care and diligence ((for protecting)) to protect public health and ((shall abide by)) comply with this chapter and applicable state and federal drinking water laws and regulations.~~

~~((2) The certified operator shall operate the water system)) (b) Perform only the duties consistent with ~~((experience))~~ the operator's experience, skills, abilities, and ((training appropriate to their)) level of certification.~~

~~((3) The certified operator shall perform his or her duties in accordance with this section. Failure to do so may threaten public health and safety which could result in the suspension or revocation of his or her certification-)) (c) Inform the purveyor if a required action or correction is inconsistent with the operator's experience, skills, abilities, or level of certification.~~

(2) The certified operator duties in this chapter do not relieve a purveyor of the responsibility to comply with the requirements of chapter 246-290 WAC.

NEW SECTION

WAC 246-292-032 Duties of a certified operator in responsible charge. (1) A certified operator designated by the purveyor to be in responsible charge as required in WAC 246-292-020 shall perform or manage the public water system's daily operational and maintenance activities in this chapter, chapter 246-290 WAC, and according to acceptable public health practices and water industry standards.

(2) A certified operator in responsible charge or designee must be available on-site or able to be contacted immediately by telephone or other electronic communication twenty-four hours per day, every day, and able to initiate appropriate action within two hours of contact. Appropriate action may include, but is not limited to:

(a) Making necessary repairs or resolving problems; or

(b) Directing staff or contractors to make necessary repairs or resolve problems.

(3) The duties of a certified operator in responsible charge or designee include, but are not limited to:

(a) Conducting water quality monitoring, maintaining adequate records and taking follow-up action, if necessary, to comply with state and federal drinking water regulations;

(b) Implementing preventive maintenance programs, inspecting treatment and other public water system components for malfunctions, maintaining adequate records, and making needed repairs;

(c) Analyzing, reviewing, and maintaining records of instrument readings and laboratory test results, determining the location and causes of any malfunctions, adjusting various treatment processes or other components;

(d) Implementing a cross-connection control program, if directed by the purveyor;

(e) Determining and implementing remedial actions in an emergency and, if applicable, following departmental directives;

(f) Cooperating during a special purpose investigation or sanitary survey as required in chapter 246-290 WAC;

(g) Providing required records and reports to the department or its representative upon request; and

(h) Providing written notification to the department within thirty days of:

(i) Starting operations of a public water system; or

(ii) Ending operations of a public water system.

(4) The duties of a certified operator in responsible charge required in this chapter do not relieve a purveyor of the responsibility to comply with the requirements of chapter 246-290 WAC.

NEW SECTION

WAC 246-292-033 Duties of a CCS. (1) A CCS designated by a purveyor as required in WAC 246-292-050(4) shall develop, implement, and maintain a cross-connection control program as required in WAC 246-290-490.

(2) A CCS shall perform the following duties:

(a) Assess the degree of hazard posed by the consumer's water system to the public water system, as required in WAC 246-290-490 (4)(a)(i);

(b) Determine the appropriate method of backflow protection to prevent contamination of the public water system

by the consumer's water system, as required in WAC 246-290-490 (4)(a)(ii);

(c) Inspect backflow preventer installations to verify that the protection provided is appropriate for the assessed degree of hazard, as required in WAC 246-290-490 (7)(a)(i);

(d) Investigate and respond to backflow incidents known to have contaminated or suspected of contaminating the public water system, as required in WAC 246-290-490 (3)(h);

(e) Develop and maintain the purveyor's cross-connection control records, as required in WAC 246-290-490 (3), (4), and (8);

(f) Complete and sign the purveyor's cross-connection control related reports and make the reports available to the department upon request, as required in WAC 246-290-490(8) including:

(i) The cross-connection control annual summary reports; and

(ii) Backflow incident reports after an incident has occurred that contaminated the public water system;

(g) Take corrective action as required in WAC 246-290-490 (2)(h) when a consumer fails to comply with the purveyor's cross-connection control requirements regarding the installation, inspection, field testing, maintenance, or repair of a backflow preventer that protects the public water system; and

(h) Review inspection and field test reports for backflow preventers that protect the public water system and take follow-up action to resolve incomplete, erroneous, or fraudulent reports.

(3) If the purveyor grants exceptions to mandatory premises isolation as allowed under WAC 246-290-490 (4)(b), the CCS shall:

(a) Determine, on a case-by-case basis, if granting the consumer an exception to mandatory premises isolation is appropriate;

(b) Complete and sign an exception form provided by the department for each exception granted;

(c) Include the completed exception forms in the purveyor's cross-connection control annual summary report; and

(d) Submit the completed and signed exception forms to the department upon request.

(4) As allowed in WAC 246-290-490 (7)(a)(ii), a CCS's duties may include inspecting:

(a) Air gaps to determine if they are approved air gaps, and reporting the results of the inspections as required in WAC 246-292-036(8); and

(b) Backflow prevention assemblies to determine if they are installed correctly and approved by the department.

(5) The CCS duties in this chapter do not relieve a purveyor of the responsibility to comply with the requirements of chapter 246-290 WAC.

NEW SECTION

WAC 246-292-034 Duties of a BAT. (1) A BAT shall inspect, field test, maintain, and repair backflow prevention assemblies, backflow prevention devices, and air gaps that protect the public water system and report the results as required in WAC 246-290-490(7).

(2) A BAT must be equipped with and capable of using a field test kit, all tools, and other equipment needed to inspect and field test backflow prevention assemblies, and to inspect air gaps and AVBs.

(3) When conducting inspections and field tests of backflow preventers, a BAT shall:

(a) Use procedures that:

(i) Meet the requirements in WAC 246-290-490 (7)(d); and

(ii) Are consistent with the field test procedures used on the BAT's most recently passed practical exam;

(b) Accurately perform inspections and field tests;

(c) Record inspection and field test results completely, accurately, and legibly on a backflow preventer inspection and field test report that meets the requirements in WAC 246-292-036;

(d) Accurately interpret the field test results and determine if a backflow prevention assembly passed or failed the field test;

(e) Accurately interpret air gap inspection results and determine if the air gap is an approved air gap at the time of inspection; and

(f) Accurately interpret inspection results and determine if an AVB is operating properly.

(4) A BAT shall submit a completed backflow preventer inspection and field test report in an original, copy, facsimile, or electronic format to the owner of the backflow preventer and to the purveyor.

(5) A BAT shall use a field test kit that meets the general design criteria in Chapter 10, Section 10.2.3 and the criteria in Appendix A, Section A.7 of the *Manual of Cross-Connection Control*, 10th Edition, published by the University of Southern California, October 2009 (*USC Manual*).

(6) A BAT shall have the field test kit and components:

(a) Evaluated for performance, pressure-tested, and checked for accuracy:

(i) At least once within the twelve month period before the inspection and field test date; and

(ii) By an independent laboratory that meets criteria and uses procedures specified in Appendix A, Section A.7 of the *USC Manual*.

(b) Recalibrated, repaired, or replaced, if the pressure test or accuracy check results fail to meet the criteria in Appendix A, Section A.7 of the *USC Manual*.

(7) A BAT shall submit to the purveyor as required in WAC 246-290-490(3):

(a) Laboratory-issued documentation that verifies the accuracy of the field test kit and provides the results of the pressure testing; and

(b) A copy of the department-issued BAT validation card that verifies the BAT's current certification status.

(8) When inspecting, testing, maintaining, or repairing a backflow prevention assembly or AVB, a BAT shall:

(a) Use only replacement parts from the original manufacturer so that the backflow prevention assembly or AVB meets the approval requirements of WAC 246-290-490(5);

(b) Retain, or restore if needed, the manufacturer's design, material, and operational characteristics of the backflow prevention assembly or AVB so that the backflow pre-

venter meets the approval requirements of WAC 246-290-490(5); and

(c) Be a certified plumber as required in chapter 18.106 RCW, if applicable.

NEW SECTION

WAC 246-292-036 Backflow preventer inspection and field test report content. (1) A BAT shall complete a backflow preventer inspection and field test report as required in WAC 246-292-034 (3)(c).

(2) The completed backflow preventer inspection and field test report must contain facility and hazard information including:

- (a) Facility name;
- (b) Service address;
- (c) Name and contact information of the facility owner or owner's representative; and
- (d) Description of downstream hazards or premises, such as the categories identified in WAC 246-290-490, Table 9, if known to the BAT.

(3) The completed backflow preventer inspection and field test report must contain backflow prevention assembly or AVB information including:

- (a) Description of physical location;
- (b) Assembly type;
- (c) Manufacturer;
- (d) Model;
- (e) Serial number;
- (f) Size;
- (g) Whether or not the assembly or AVB met the approval requirements in WAC 246-290-490(5) at the time of inspection;
- (h) Whether or not the installation is new, existing, or a replacement; and
- (i) For a replacement installation, the serial number of the previously installed assembly or AVB, if known to the BAT.

(4) The completed backflow preventer inspection and field test report must contain installation information including whether or not the backflow prevention assembly or AVB is properly installed:

- (a) In an orientation that meets the approval requirements of WAC 246-290-490 (6)(a);
- (b) According to industry standards, as required in WAC 246-290-490(6); and
- (c) So that the air gap under the relief valve of a reduced pressure backflow assembly meets the approved air gap requirements in chapter 246-290 WAC.

(5) The completed backflow preventer inspection and field test report must contain results of backflow prevention assembly inspections and field tests conducted according to the field test procedures that meet the requirements of WAC 246-290-490 (7)(d), including:

- (a) Accurate field test kit readings for the initial field test;
- (b) Accurate field test kit readings for the field test conducted after maintenance or repair, if applicable; and
- (c) If the backflow prevention assembly passed or failed each field test.

(6) The completed backflow preventer inspection and field test report must contain backflow prevention assembly or AVB maintenance and repair information, if applicable and known to the BAT, including a:

- (a) Description of maintenance performed;
- (b) Description of repairs made; and
- (c) List of materials or replacement parts used.

(7) The completed backflow preventer inspection and field test report must contain field test kit information for each field test conducted, including:

- (a) Manufacturer;
- (b) Model;
- (c) Serial number; and

(d) Date of the most recent laboratory accuracy verification or laboratory calibration that meets the requirements of WAC 246-292-034(6).

(8) The completed backflow preventer inspection and field test report must contain results of air gap inspections including:

- (a) Measurements of the supply pipe diameter;
- (b) Measurements of the air gap separation; and
- (c) Whether or not the air gap is an approved air gap at the time of inspection.

(9) The completed backflow preventer inspection and field test report must contain remarks, if applicable, including, but not limited to:

- (a) A statement that the backflow prevention assembly or AVB does not meet the approval requirements in WAC 246-290-490(5);
- (b) A list of all missing or defective backflow prevention assembly or AVB components, including shutoff valves and test cocks; and
- (c) A description of any conditions that could adversely affect the performance of the backflow preventer.

(10) The completed backflow preventer inspection and field test report must contain information about the BAT who inspected, field tested, maintained, or repaired the backflow preventer, including the BAT's:

- (a) Printed name;
- (b) Company name;
- (c) Phone number; and
- (d) BAT certification number issued by the department.

(11) The completed backflow preventer inspection and field test report must contain the date of each inspection, field test, maintenance or repair, if applicable, performed by the BAT.

(12) The completed backflow preventer inspection and field test report must contain a statement certifying that the BAT:

- (a) Personally inspected and field tested the backflow prevention assembly; or
- (b) Personally inspected the air gap or AVB; and
- (c) Used field test procedures that met the requirements of WAC 246-290-490 (7)(d); and
- (d) Provided true, complete, and accurate information in the report.

(13) The completed backflow preventer inspection and field test report must contain the signature of the BAT who inspected, field tested, maintained, or repaired the backflow

preventer. The signature must be in original, copy, facsimile, or electronic format.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-040 Classification of public water systems. ((1)) The department shall classify ((purification)) water treatment plants ((according to the Association of Boards of Certification's "Purification Plant Criteria" and set forth in the *Water Works Certification Program Guideline* (guideline). Copies of the guideline are available on request by contacting the Department of Health, Drinking Water Division, Water Works Certification Program P.O. Box 47822, Olympia, Washington 98504-7822.

(2) The department shall classify distribution systems into groups as follows:

Classification	Population Served*
Group S	less than 251
Group 1	251 to 1,500
Group 2	1,501 to 15,000
Group 3	15,001 to 50,000
Group 4	greater than 50,000

* If the population served is not known, apply this formula: Number of Service Connections x 2.5 = Population Served)

and distribution systems.

(1) Water treatment plants.

(a) Water treatment plants are classified according to the point system in the ABC "Purification Plant Criteria" publication (October 2007) and are in Table 1.

Table 1
Water Treatment Plant Classification

<u>Total Points Assigned</u>	<u>Water Treatment Plant Classification</u>
<u>Less than 31</u>	<u>Class 1</u>
<u>31 to 55</u>	<u>Class 2</u>
<u>56 to 75</u>	<u>Class 3</u>
<u>More than 75</u>	<u>Class 4</u>

(b) The scope of water treatment plant processes include, but are not limited to:

- (i) Water filtration;
- (ii) Ion exchange;
- (iii) Electrodialysis;
- (iv) Reverse osmosis; or
- (v) Inorganic contaminant removal.

(c) The scope of a water treatment plant does not include unit processes installed for:

- (i) In-line fluoridation;
- (ii) In-line chlorination; or
- (iii) Chemical addition to inhibit corrosion.

(2) Distribution systems are classified according to the population served from a public water system's WFI form and are in Table 2.

Table 2
Distribution Systems Classification

<u>Population Served</u>	<u>Distribution System Classification</u>
<u>Less than 251</u>	<u>Class S</u>
<u>251 to 1,500</u>	<u>Class 1</u>
<u>1,501 to 15,000</u>	<u>Class 2</u>
<u>15,001 to 50,000</u>	<u>Class 3</u>
<u>More than 50,000</u>	<u>Class 4</u>

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-050 Public water system minimum operator certification requirements ((for public water systems)). ((1)) Owners shall have at least one certified operator in responsible charge of the daily operational activities of their system as follows:

(a) A water treatment plant operator (WTPO) shall be responsible for the operation of:

- (i) A purification plant with a Class 2 rating or higher;
- (ii) Any purification plant using complex filtration technology; or
- (iii) Any unfiltered Group A surface water or GWI system with one hundred or more services in use at any one time.

(b) A basic treatment operator (BTO) shall be responsible for the operation of:

- (i) A public water system with a Class 1 purification plant rating; or
- (ii) An unfiltered Group A surface water or GWI system with less than one hundred services in use at any one time.

(c) A water distribution manager (WDM) shall be responsible for the operation of a Group A water system:

- (i) Serving a population greater than two hundred fifty people;
- (ii) A Class 2 purification plant rating or higher; or
- (iii) Any purification plant using complex filtration technology.

(d) A water distribution specialist (WDS) shall be responsible for the operation of:

- (i) Group A community or NTNC water systems serving a population of two hundred fifty people or less.
- (ii) Group A TNC systems classified as significant non-compliers (SNCs) and not required to provide treatment other than simple disinfection if serving a population of two hundred fifty people or less.

(2) Owners required to develop a cross-connection control program in accordance with WAC 246-290-490 shall ensure that a cross-connection control specialist (CCS) is responsible for:

- (a) The system's cross-connection control program;
- (b) Initial inspection of premises served by the system; for cross-connections; and

(c) Periodic reinspection of premises served by the system, for cross connections.

(3) Owners shall ensure that a backflow assembly tester (BAT) is responsible for inspecting, testing, and monitoring backflow prevention assemblies in accordance with WAC 246-290-490.

(4) A WTPO and WDM shall be certified at a level equal to or higher than the water system's classification rating assigned by the department in accordance with WAC 246-292-040.

(5) The certified operator in responsible charge of each operating shift shall be certified at a minimum of one level lower than the classification of the purification plant or distribution system.) (1) A purveyor of a public water system shall designate at least one certified operator in responsible charge of a water treatment plant according to the minimum operator certification levels in Table 3.

Table 3

Water Treatment Plant Classification for the Minimum Level of Certified Operators in Responsible Charge

<u>Water Treatment Plant Classification</u>	<u>Minimum Operator Certification Level</u>
<u>Class 1</u>	<u>WTPO 1</u>
<u>Class 2</u>	<u>WTPO 2</u>
<u>Class 3</u>	<u>WTPO 3</u>
<u>Class 4</u>	<u>WTPO 4</u>

(2) A purveyor of a public water system shall designate at least one certified operator in responsible charge of a distribution system according to the minimum operator certification levels in Table 4 for:

(a) A community or nontransient noncommunity water system;

(b) A transient noncommunity water system, if the system has a groundwater source that requires 4-log treatment as required in WAC 246-290-451 or 246-290-453; or

(c) A transient noncommunity water system that is violating or has violated requirements in chapter 246-290 WAC, and the violations may create, or have created an imminent or significant risk to human health. Violations include, but are not limited to:

(i) Repeated violations of monitoring or reporting requirements;

(ii) Failure to address an exceedance of permissible levels of regulated contaminants;

(iii) Failure to comply with treatment technique standards or requirements;

(iv) Failure to comply with waterworks operator certification requirements;

(v) Failure to submit to a sanitary survey; or

(vi) Failure to comply with Tier 1 public notification requirements.

Table 4

Distribution System Classification for the Minimum Level of Certified Operators in Responsible Charge

<u>Distribution System Classification</u>	<u>Minimum Operator Certification Level</u>
<u>Class S</u>	<u>WDS</u>
<u>Class 1</u>	<u>WDM 1</u>
<u>Class 2</u>	<u>WDM 2</u>
<u>Class 3</u>	<u>WDM 3</u>
<u>Class 4</u>	<u>WDM 4</u>

(3) A purveyor of a public water system with designated operating shifts and major segments may:

(a) Designate a certified operator in responsible charge at one level lower than the minimum certification requirements in subsections (1) and (2) of this section for each operating shift outside of regular operating hours, or each major segment of a water treatment plant or distribution system; and

(b) Assign a major segment to an operator that is certified at less than the minimum certification level requirement in (a) of this subsection if the purveyor has written procedures that include:

(i) Which operational decisions the assigned operator may make that are consistent with their experience, skills, and abilities;

(ii) Identification of the conditions that require the assigned operator to consult with the certified operator in responsible charge in (a) of this subsection, and contact information; and

(iii) The date and signatures of the certified operator in responsible charge in (a) of this subsection, and the assigned operator.

(4) A purveyor shall designate a CCS to be in responsible charge of a public water system's cross-connection control program.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-055 Minimum requirements for contract operators. (1) ((Contract operators in responsible charge of the daily operational activities of three or more public water systems for operation of a system shall be certified as follows:

(a) At a minimum, a WDM and CCS, with the WDM level determined by the largest public water system operated;

(b) A BTO for public water systems with a Class 1 purification plant rating; and

(c) A WTPO for public water systems with a Class 2 purification plant rating or higher or any purification plant using complex filtration technology.

(2) Contract operators shall be available on a twenty-four hour per day basis.

(3) A contract operator((s shall submit two copies of all signed operations contracts to the department within thirty days of the effective date)) must:

(a) Be certified, at a minimum, as a CCS and a WDM 1;

(b) Be certified at a level determined by the highest classification of the water treatment plant or distribution system operated as required in WAC 246-292-050 in Tables 3 and 4;

(c) For each public water system under contract with the operator:

(i) Be available on-site or able to be contacted immediately by telephone or other electronic communication twenty-four hours per day, every day; and

(ii) Be able to initiate appropriate action within two hours of contact, as required for certified operators in responsible charge under WAC 246-292-032(2), for every public water system that the contract operator is under contract;

(d) Submit one copy of each public water system operations contract to the department within thirty days of the effective date of the contract. An operations contract must include the following:

- (i) Contract operator name and certification number;
- (ii) List of the duties that must be performed;
- (iii) Duration of the contract term;
- (iv) Signature of the public water system representative;

(v) Signature of the contract operator; and

(vi) Effective date of the contract.

(e) Notify the department within thirty days when starting operation of a public water system, or ending operation of a public water system.

~~((4))~~ (2) A contract operator(s) who ~~((are satellite management agencies -))~~ is an approved SMA((s)) shall ~~((also))~~ comply with ~~((the provisions of RCW 70.116.134))~~ chapter 246-295 WAC.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-060 Minimum education and experience requirements ~~((for water works))~~ to become a certified operator((s)). (1) Minimum education and operating experience requirements for ~~((the following water works operator classifications and levels shall be as indicated in Tables 1A and 1B:))~~

Table 1A
MINIMUM EDUCATION AND OPERATING EXPERIENCE REQUIREMENTS

WATER WORKS OPERATOR CLASSIFICATIONS	LEVEL									
	OPERATOR-IN-TRAINING-OIT*		1		2		3		4	
	Education	Operating-Experience	Education	Operating-Experience	Education	Operating-Experience	Education	Operating-Experience	Education	Operating-Experience
Water Distribution Manager (WDM)	12 years	3 months	12 years	1 year	12 years	3 years	14 years	4 years	16 years	4 years
Water Treatment Plant Operator (WTPO)	12 years	3 months	12 years	1 year	12 years	3 years	14 years	4 years	16 years	4 years

* OIT experience may be fulfilled by three months operating experience or thirty hours of relevant water system training (three CEUs or college credits).

Table 1B
MINIMUM EDUCATION AND OPERATING EXPERIENCE REQUIREMENTS

WATER WORKS OPERATOR CLASSIFICATIONS	Education	Operating Experience
Basic Treatment Operator (BTO)	12 years	6 months
Water Distribution Specialist (WDS)	12 years	6 months
Cross-connection Control Specialist (CCS)	12 years	6 months
Backflow Assembly Tester (BAT)	NA	NA

(1) Minimum education requirement shall be the acceptable level of education, or experience which may be substituted for education as outlined in the guideline.

(2) Minimum operating experience requirement shall be the routine on-site performance of duties in a water purification plant or distribution system. Those duties shall affect plant or system performance and/or water quality.

(3) The department may allow substitutions of a person's relevant experience when the person cannot meet the formal education requirement, or vice versa in the WDM, WTPO, BTO, WDS and CCS classifications as outlined in the guideline.)) a water treatment plant operator are in Table 5.

Table 5
WTPO Minimum Education and Experience Requirements

Certification Level	Minimum Education Requirement (see Table 7 for equivalents)	Minimum Experience Requirement
WTPO - OIT	12 years	One of the following:

<u>Certification Level</u>	<u>Minimum Education Requirement (see Table 7 for equivalents)</u>	<u>Minimum Experience Requirement</u>
		<ul style="list-style-type: none"> • <u>3 months operating experience in a water treatment plant or distribution system;</u> • <u>3 months water-related experience; or</u> • <u>30 hours of relevant water system training (3 CEUs or 3 college credits).</u>
<u>WTPO 1</u>	<u>12 years</u>	<u>12 months experience in a water treatment plant.</u>
<u>WTPO 2</u>	<u>12 years</u>	<ul style="list-style-type: none"> • <u>18 months operating experience in a water treatment plant; and</u> • <u>18 months additional water-related experience.</u> • <u>Relevant excess education may substitute for additional experience requirement.</u>
<u>WTPO 3</u>	<u>14 years</u>	<ul style="list-style-type: none"> • <u>24 months operating experience in a Class 2 or higher rated water treatment plant; and</u> • <u>24 months additional water-related experience.</u> • <u>Relevant excess education may substitute for additional water-related experience requirement.</u>
<u>WTPO 4</u>	<u>16 years</u>	<ul style="list-style-type: none"> • <u>24 months operating experience in a Class 3 or higher rated water treatment plant; and</u> • <u>24 months additional water-related experience.</u> • <u>Relevant excess education may substitute for additional water-related experience requirement.</u>

(2) Minimum education and operating experience requirements for WDS and WDM certification levels are in Table 6.

Table 6
WDS and WDM Minimum Education and Experience Requirements

<u>Certification Level</u>	<u>Minimum Education Requirement (see Table 7 for equivalents)</u>	<u>Minimum Experience Requirement</u>
<u>WDS</u>	<u>12 years</u>	<u>6 months operating experience in a water treatment plant or distribution system.</u>
<u>WDM - OIT</u>	<u>12 years</u>	<p><u>One of the following:</u></p> <ul style="list-style-type: none"> • <u>3 months operating experience in a water treatment plant or distribution system;</u> • <u>3 months water-related experience; or</u> • <u>30 hours of relevant water system training (3 CEUs or 3 college credits).</u>
<u>WDM 1</u>	<u>12 years</u>	<u>12 months operating experience in a water treatment plant or distribution system.</u>
<u>WDM 2</u>	<u>12 years</u>	<ul style="list-style-type: none"> • <u>12 months operating experience in a water treatment plant or distribution system; and</u> • <u>24 months additional water-related experience.</u> • <u>Relevant excess education may substitute for additional water-related experience requirement.</u>
<u>WDM 3</u>	<u>14 years</u>	<ul style="list-style-type: none"> • <u>12 months operating experience in a water treatment plant or distribution system; and</u> • <u>36 months additional water-related experience.</u>

<u>Certification Level</u>	<u>Minimum Education Requirement (see Table 7 for equivalents)</u>	<u>Minimum Experience Requirement</u>
		<ul style="list-style-type: none"> • <u>Relevant excess education may substitute for additional water-related experience requirement.</u>
WDM 4	16 years	<ul style="list-style-type: none"> • <u>12 months operating experience in a water treatment plant or distribution system; and</u> • <u>36 months additional water-related experience.</u> • <u>Relevant excess education may substitute for additional water-related experience requirement.</u>

(3) The minimum education and operating experience requirements for a CCS are:

(a) Twelve years of education (refer to Table 7 for equivalent education requirements); and

(b) At least six months operating experience in a public water system's water treatment plant, distribution system, or

water-related experience implementing a cross-connection control program for a consumer's water system not subject to WAC 246-290-490.

(4) A BAT shall have at least twelve years of education (refer to Table 7 for equivalent education requirements).

Table 7
Minimum Education Requirements and Equivalent Education and Substitutions

<u>Minimum Education Requirement</u>	<u>Equivalent Education and Substitutions</u>
<u>12 years of education</u>	<ul style="list-style-type: none"> • <u>High school diploma or GED;</u> • <u>One year of water-related experience may substitute for each year of education through twelfth grade.</u>
<u>14 years of education</u>	<ul style="list-style-type: none"> • <u>High school diploma or GED, and one of the following:</u> <ul style="list-style-type: none"> • <u>A two-year college degree;</u> • <u>60 college semester credits;</u> • <u>90 college quarter credits; or</u> • <u>90 CEUs from relevant water system training.</u> • <u>One year of operating experience or water-related experience may substitute for each year of education through twelfth grade.</u> • <u>Two years of operating experience or water-related experience may substitute for each year of college education.</u>
<u>16 years of education</u>	<ul style="list-style-type: none"> • <u>High school diploma or GED, and one of the following:</u> <ul style="list-style-type: none"> • <u>A four-year college degree;</u> • <u>120 college semester credits;</u> • <u>180 college quarter credits; or</u> • <u>180 CEUs from relevant water system training.</u> • <u>One year of operating experience or water-related experience may substitute for each year of education through twelfth grade.</u> • <u>Two years of water-related experience may substitute for each year of college education.</u>

(5) Water-related experience used to substitute for the minimum education requirements must exceed the minimum experience requirements for certification in Tables 5 and 6 before the experience is used as an equivalent education substitution in Table 7.

(6) The department may approve an applicant's relevant excess education or water-related experience that meets the requirements in Tables 5, 6, and 7.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-070 Application and examination.
 ((1) Applicants for any classification of water works operator shall:

(a) Submit a completed application, application fee and examination charge to cover the cost of a validated exam;

~~(b) Meet the minimum education and operating experience criteria for the level of certification for which they are applying in accordance with WAC 246-292-060; and~~

~~(c) Pass a validated examination.~~

~~(2) The department shall:~~

~~(a) Ensure a validated examination is conducted at least three times annually at convenient places and times as set by the department;~~

~~(b) Provide notice of places and times of regularly scheduled examinations; and~~

~~(c) Issue applicable certificates to applicants meeting all the conditions for certification.~~

~~(3) Applicants who fail or do not appear for their scheduled examination may reapply for a regularly scheduled examination by submitting a new application, application fee and examination charge.)) (1) To become certified as a CCS, WDS, WDM, or WTPO, an applicant shall:~~

~~(a) Submit to the department a completed application on a form provided by the department, and include:~~

~~(i) An application fee, as specified in WAC 246-292-990;~~

~~(ii) A completed "Waterworks Operator Information" form;~~

~~(iii) Affidavits of employment that documents experience;~~

~~(iv) Transcripts of education and training, if applicable; and~~

~~(v) Other supporting documentation, as required in this chapter.~~

~~(b) Meet the minimum education and operating experience requirements in WAC 246-292-060; and~~

~~(c) Take and pass a validated examination, including payment of an examination fee made payable to the department's examination contractor as specified in the application packet.~~

~~(2) The effective date of the certificate for CCS, WDS, WDM, or WTPO classifications is the last day of the month in which the applicant took and passed the examination.~~

~~(3) To become certified as a BAT, an applicant shall:~~

~~(a) Submit to the department a completed application on a form provided by the department, and include:~~

~~(i) An application fee, as specified in WAC 246-292-990; and~~

~~(ii) An examination fee to the department's examination contractor as specified in the application packet; and~~

~~(b) Take and pass:~~

~~(i) A validated computer-based examination; and~~

~~(ii) A department practical examination.~~

~~(4) The effective date of the certificate for a BAT is the date the applicant passed the examination.~~

~~(5) The department shall consider for approval all complete applications.~~

~~(6) The department may deny an application for certification as specified in WAC 246-292-105.~~

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-075 Reciprocity. (1) The department may issue a certification for a WDS, WDM, or WTPO with-

out examination to ~~((individuals))~~ an applicant who ~~((possess))~~ has a valid, unrestricted certificate from another state or province if:

~~((1) The applicant possesses a certificate from a state or province having substantially equivalent standards as determined by the department; and~~

~~(2) A completed application, application fee and a copy of the valid state or province certificate are submitted to the department.)) (a) The education, operating experience, and professional growth requirements from the other state or provincial certification program are substantially equivalent standards as the certification requirements in this chapter; and~~

~~(b) An applicant passed the ABC validated examination or an equivalent examination as determined by the department, with an equivalent Washington passing score of at least seventy percent.~~

~~(2) An applicant for a WDS, WDM, or WTPO certification by reciprocity shall comply with the requirements in WAC 246-292-070, except the examination and application fees and submit:~~

~~(a) Proof of a valid, unrestricted waterworks operator certification from the reciprocal state or province; and~~

~~(b) The reciprocity fee as specified in WAC 246-292-990, Table 8.~~

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-080 Public water system temporary operator certification. (1) The department may issue a non-renewable temporary certification to an ~~((operator))~~ individual to fill a vacated position for a certified operator in responsible charge, or for a position reclassified in WAC 246-292-086, for a public water system that is required to have a certified operator. The purveyor of the public water system and the operator may jointly submit to the department an application for a temporary certification without the operator taking an examination if:

~~(a) The operator meets, or will meet before the end of the temporary certification period, the minimum education and operating experience requirements of the water treatment plant or distribution system classification as required in WAC 246-292-050 for the temporary position; and~~

~~(b) The ((public water system)) operator submits all of the following:~~

~~(i) A letter requesting temporary certification for the ((operator)) vacated certified operator in responsible charge position; ((and))~~

~~(ii) ((The applicable fee.~~

~~(b) The operator completes and submits a certification application; and~~

~~(c) The operator meets or will meet the minimum education and operating experience requirements of the mandatory classification for the vacated position, prior to the expiration date of the temporary certification.)) A temporary certification application on a form provided by the department signed by the operator and the purveyor for department review and approval:~~

(iii) Affidavits of employment and other supporting information to document experience and demonstrate that the applicant will meet the requirements to become certified for the position by the end of the temporary certification period; and

(iv) A temporary certification application fee as specified in WAC 246-292-990(4).

(2) ((Only one temporary certification may be issued in each instance of any position vacancy.

(3)) The department may issue a temporary certification ((shall be valid)) for up to twelve months except as specified in subsection (3) or (4) of this section.

(3) The department may issue a temporary certification for up to sixty days to an operator of a public water system that uses a surface water or a GWI source, if:

(a) The public water system has no more than two WTPO positions;

(b) All WTPO positions for the public water system are vacant at the same time;

(c) The operator meets the minimum education and operating experience requirements for the position in WAC 246-292-060 at the time the department receives the application; and

(d) The operator submits all information as required in subsection (1)(b) of this section.

(4) The department may issue a temporary certification for up to one hundred twenty days to an operator of a public water system if:

(a) The public water system meets the criteria in WAC 246-292-050 (2)(c);

(b) The operator meets the minimum education and operating experience requirements for the position in WAC 246-292-060 at the time the department receives the application; and

(c) The operator submits all information as required in subsection (1)(b) of this section.

((4) The) (5) Only one temporary certification ((shall) may be ((specific to the designated system and is not transferable to any other system or operator)) issued for each vacated position for a certified operator in responsible charge.

(6) A temporary certification issued by the department to an operator for a vacated certified operator in responsible charge position of a public water system is not transferable to:

(a) Another operator;

(b) Another position within the public water system; or

(c) Another public water system.

AMENDATORY SECTION (Amending WSR 05-06-122, filed 3/2/05, effective 4/2/05)

WAC 246-292-085 ((Grandparenting)) Grandparented certification. (1) A certified operator((s)) who received a grandparented certification prior to January 1, 2001, ((for the minimum classification of a water system)) remains subject to the following:

((4)) (a) A ((grandparent)) grandparented operator certification is ((site specific)) valid only for the designated pub-

lic water system and ((nontransferable)) is not transferable to another operator or public water system;

((2) A grandparented) (b) An operator with a grandparented certification shall meet all ((certification)) renewal requirements ((under the provisions of)) in WAC 246-292-090; and

((3)) (c) If an operator with a grandparented ((operator)) certification fails to renew ((his or her certification under)) the certificate as required in WAC 246-292-090, the ((grandparent certification is)) operator shall no longer ((valid)) be certified. ((To become recertified)) If the certificate expires, the operator must apply for a new certification and meet all the requirements of a new applicant((; and

(4)) as required in WAC 246-292-060 and 246-292-070.

(2) If the classification of a water treatment plant or distribution system ((classification)) changes to a higher level, the ((grandparent)) grandparented certification is no longer valid((; and the owner and operator)). The purveyor shall comply with ((chapter 246-292)) the requirements for obtaining a certified operator, as required in WAC 246-292-040 and 246-292-050.

NEW SECTION

WAC 246-292-086 Certified BTO. (1) The department shall:

(a) Reclassify a certified BTO that has twelve months or more of operating experience in a water treatment plant to a WTPO 1. To document operating experience in a water treatment plant, a BTO shall submit the following to the department for review and approval:

(i) Completed "Waterworks Operator Information" form provided by the department; and

(ii) Affidavits of employment that document water treatment plant experience.

(b) Issue a temporary operator certification to a BTO designated as a certified operator in responsible charge in WAC 246-292-020 for up to twelve months as a WTPO 1 under the following criteria:

(i) The BTO is currently operating a water treatment plant;

(ii) The BTO does not have twelve months of operating experience in a water treatment plant; and

(iii) The water treatment plant is classified as Class 1 in WAC 246-292-040 Table 1.

(2) A BTO that does not have twelve months of operating experience in a water treatment plant, and that does not meet the criteria in subsection (1)(b) of this section, shall remain a certified BTO.

(3) Within twelve months of the effective date of this chapter, a BTO may request that the department reclassify the certificate from a BTO to a WTPO-OIT by submitting the following information for department review and approval:

(a) Completed "Waterworks Operator Information" form; and

(b) Affidavits of employment that document water treatment plant experience.

AMENDATORY SECTION (Amending WSR 05-06-122, filed 3/2/05, effective 4/2/05)

WAC 246-292-090 Renewal of certificates. (1) ~~((The operator must renew his or her certificate by January 1st of each year))~~ Certificates are valid until December 31st each year, except that an initial certificate issued after October 1st will be valid through the following calendar year.

(2) ~~((The department shall renew an operator's certificates when the operator:))~~ To renew a certificate, a certified operator shall submit to the department:

(a) ~~((Pays the applicable))~~ The annual renewal fee as specified in WAC 246-292-990; ((and))

(b) ~~((Demonstrates completion of required professional growth in accordance with subsections (3) and (4) of this section. The operator must provide evidence of professional growth acceptable to the department within the designated professional growth reporting period as described in the department guideline titled, *Water Works Certification Program Guideline*.~~

(3) ~~To demonstrate professional growth, a holder of WDM, WTPO, WDS, BTO or CCS certification shall accomplish one of the following activities during each professional growth reporting period:~~

(a) ~~Accumulate a minimum of three continuing education units (CEU), or college credits for training that:~~

(i) ~~Has an influence on water quality, water supply, or public health protection; and~~

(ii) ~~Is directly relevant to the operation, or maintenance of a water system; or~~

(iii) ~~Is directly relevant to managing the operation, or maintenance activities of a water system;~~

(b) ~~Advance by examination in the Washington water works operator certification program within the classifications WDM and WTPO to a level 2, 3, or 4; or~~

(c) ~~Achieve certification by examination in a different classification as shown below:~~

(i) ~~WDM to WTPO, BTO or CCS;~~

(ii) ~~WTPO to WDM, or CCS;~~

(iii) ~~WDS to WDM, WTPO, BTO or CCS;~~

(iv) ~~BTO to WDM, WTPO, WDS or CCS; or~~

(v) ~~CCS to WDM, WTPO, BTO, or WDS.~~

(4) ~~To demonstrate professional growth, a certified BAT must satisfactorily complete the department's backflow assembly tester professional growth examination during each professional growth reporting period.~~

(5) ~~If an operator fails to renew his or her certificate, the department shall notify the operator by December 31st, that the certificate is temporarily valid for two months beginning January 1st.~~

(6) ~~If an operator fails to renew the certificate within the two-month period, the certificate is invalid. The department shall notify the operator in writing of an invalid certificate.~~

(7) ~~An operator who fails to renew his or her certification may reapply for certification, but must meet the requirements for a new applicant.)~~ The original annual renewal notice, and if applicable:

(c) Updated information on the renewal notice, including water system name and identification number for any change in the specific public water systems operated by the certified operator; and

(d) Completed professional growth documentation as required in WAC 246-292-095(3).

(3) A certified operator that fails to renew a certificate by January 1st shall pay a late fee as specified in WAC 246-292-990, Table 8. The department shall notify the operator that the certificate is temporarily valid for two months, beginning January 1st. A temporarily valid certificate not renewed by the last day of February becomes invalid on March 1st. The department shall notify the operator in writing when a temporarily valid certificate is invalidated.

(4) A certified operator whose failure to renew results in an invalid certificate may reapply for certification and shall meet the requirements for a new certificate in WAC 246-292-060 and 246-292-070.

NEW SECTION

WAC 246-292-095 Professional growth. (1) A BTO, CCS, WDS, WDM, or WTPO shall demonstrate professional growth during each professional growth reporting period of at least three years, and complete the requirements by December 31st, as follows:

(a) Accumulate a minimum of three CEU or college credits meeting the definition of relevant water system training in WAC 246-292-010;

(b) Advance as a WDM or WTPO by examination to a higher level classification; or

(c) Achieve certification by examination in a different classification as follows:

(i) A BTO obtains a CCS, WDM, or WTPO certification;

(ii) A CCS obtains a WDS, WDM, or WTPO certification;

(iii) A WDM obtains a CCS or WTPO certification;

(iv) A WDS obtains a CCS, WDM, or WTPO certification; or

(v) A WTPO obtains a CCS or WDM certification.

(2) A certified BAT shall demonstrate professional growth by passing the department's BAT professional growth examination during each professional growth reporting period.

(3) All certified operators shall submit professional growth documentation to the department or its designee by February 15th following the end of the professional growth period.

(4) The department shall determine if training meets the relevant water system training requirements of WAC 246-292-060. If the department determines that training does not meet the definition, the certified operator may request a relevancy review.

AMENDATORY SECTION (Amending WSR 05-06-122, filed 3/2/05, effective 4/2/05)

WAC 246-292-100 Revocation and suspension. (1) The department may suspend an operator's certificate for up to a year or revoke an operator's certificate for up to five years if the operator:

(a) Obtains a certificate by fraud or deceit;

(b) Performs an act of fraud, deceit, or gross negligence ~~((in the operation of a purification plant or a distribution system; or))~~ when:

(i) Operating or maintaining a public water system;

(ii) Inspecting, testing, maintaining, or repairing back-flow assemblies, devices, or air gaps intended to protect a public water system from contamination; or

(iii) Developing or implementing a cross-connection control program.

(c) Intentionally violates the requirements of this chapter or department statutes, rules, or orders as authorized in chapter 246-290 WAC, RCW 70.119.110, or 70.119A.040.

~~(2) ((Except in a case of fraud, deceit, or gross negligence, the department may not revoke or suspend a certificate under subsection (1)(c) of this section until the department notifies the operator in writing of the violation and provides an opportunity for the operator to correct the violation.~~

~~(3) A revocation or suspension action brought under this section shall be conducted in accordance with RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.~~

~~(4) A person whose certificate is revoked may not apply for certification until the period of revocation has ended.~~

~~(5) After the revocation period has ended, a person whose certificate was revoked may reapply for certification as a new operator under WAC 246-292-070.~~

~~(6)) When considering if an act or omission constitutes gross negligence, the department shall consider all pertinent factors including, but not limited to:~~

~~(a) The standard of care commonly exercised by a certified operator;~~

~~(b) If the legal duty was known or should have been known to the alleged violator; and~~

~~(c) The degree to which the alleged gross negligence endangered public health.~~

~~(3) An operator whose certificate is suspended shall continue to meet all renewal and professional growth requirements in ((accordance with)) WAC 246-292-090 and 246-292-095, in order to maintain certification after the suspension period has ((lapsed)) ended.~~

~~(4) An operator whose certificate is revoked may apply for certification after the period of revocation has ended, and shall meet all requirements in WAC 246-292-060 and 246-292-070.~~

NEW SECTION

WAC 246-292-105 Certification denial. (1) The department may deny an application for certification if the applicant:

(a) Fails to meet any of the requirements of this chapter or falsifies information;

(b) At the time of application, and for any period of time during the prospective period of certification, the applicant:

(i) Has a waterworks operator certificate revoked, suspended, or restricted by another state or province with substantially equivalent standards as the requirements in this chapter;

(ii) Has a waterworks operator certificate revoked, suspended, or restricted by the department; or

(iii) Has a wastewater operator certificate in chapter 173-230 WAC revoked, suspended, or restricted by the department of ecology.

(2) The department shall give written notice to the applicant of the decision to deny a certificate and state the grounds and factual basis for the action.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-110 Enforcement. ~~(1) When ((any Group)) a public water system or operator ((is out of compliance)) fails to comply with ((these regulations)) the requirements of this chapter, the department may initiate appropriate enforcement actions as authorized ((under)) in chapters 70.119 and 70.119A RCW. ((These))~~

~~(2) The department's enforcement actions against a public water system or operator may include ((any)) one or ((combination)) more of the following:~~

~~((1) Issuance of) (a) Issuing an informal letter((s instructing or requiring)) directing appropriate corrective measures;~~

~~((2) Issuance of) (b) Issuing a notice of violation requiring appropriate corrective measures;~~

~~(c) Issuing a compliance schedule of specific actions needed to achieve compliance;~~

~~((3) Issuance of a departmental) (d) Issuing an order requiring specific actions or ceasing unacceptable activities within a designated time period;~~

~~((4) Issuance of) (e) Imposing civil penalties for up to:~~

~~(i) Five thousand dollars per day per violation; or~~

~~(ii) Ten thousand dollars per day per violation in the case of a violation that the department has determined to be a public health emergency;~~

~~((5) Prosecution as a criminal misdemeanor with fines up to one hundred dollars per offense;~~

~~((6) Revocation or suspension of a license) (f) Revoking or suspending a certification in accordance with WAC 246-292-100; and~~

~~((7)) (g) Other legal action by the attorney general or local prosecutor.~~

NEW SECTION

WAC 246-292-995 Certified operator and public water system certification fees. (1) Table 8 specifies certified operator fees:

**Table 8
Certified Operator Fees**

Operator Classification	Application Fee By Examination	Application Fee By Reciprocity	Annual Renewal Fee	Late Fee (Assessed for failure to submit the fee within the time period specified on the renewal form)
WTPO	\$87.00	\$177.00	\$42 (Regardless of the number of classifications held by the operator)	\$35 (Regardless of the number of classifications held by the operator)
WDM	\$87.00	\$177.00		
WDS	\$87.00	\$177.00		
CCS	\$51.00	Not applicable		
BAT	\$51.00	Not applicable		
BTO	Not applicable	Not applicable		

(2) A public water system shall pay the fee in Table 9 in combination with the system's annual operating permit fee as required in chapter 246-294 WAC.

(3) A public water system that fails to submit the required annual fees by the deadline specified on the renewal form shall pay the late fee as specified in Table 9.

**Table 9
Public Water System Annual Certification Fees**

Public Water System Size* (Number of Service Connections on WFI form)	Public Water System Certification Fee	Late Fee
Less than 601	\$132.00	\$35.00
601 through 6,000	\$403.00	\$40.30
6,001 through 20,000	\$536.00	\$53.60
More than 20,000	\$809.00	\$80.90

* Approved SMAs shall pay a fee based on total services in all public water systems owned by the SMA.

(4) An individual applying for a temporary certification shall pay a fee of eighty-seven dollars to the department as required in WAC 246-292-080.

(5) Fees are not refundable or transferable.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-292-160 Water works certification fees.

**WSR 13-17-073
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed August 16, 2013, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-025.

Title of Rule and Other Identifying Information: WAC 170-296A-1725 regarding license applicant minimum education.

Hearing Location(s): Department of Early Learning (DEL), State Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on September 30, 2013, at 12 p.m.

Date of Intended Adoption: Not earlier than September 30, 2013.

Submit Written Comments to: Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, online at <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, fax (360) 586-0533, by midnight on September 30, 2013.

Assistance for Persons with Disabilities: Contact DEL rule coordinator by September 23, 2013, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To allow family home child care licensees another means of meeting the requirement to have education equivalent to a high school diploma, i.e., by achieving level three in Washington state's quality rating and improvement system, early achievers.

Reasons Supporting Proposal: The proposed rules allow licensees who demonstrably provide quality child care to maintain their licenses by meeting education requirements through advancement in early achievers. This promotes access to quality care for families that rely on these providers.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

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

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

August 16, 2013
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-1725 License applicant minimum education. (1) For any initial family home child care license issued on or after March 31, 2012, the applicant must have a high school diploma.

(2) If the applicant does not have a high school diploma, he or she must submit written evidence of equivalent education. As used in this section, "equivalent education" means:

(a) Passing the general educational development (GED) tests;

(b) Completion of twelve years of elementary and secondary education;

(c) Possessing a current child development associate (CDA) credential as approved through the council for professional recognition; or

(d) Completion of forty-five credits of post secondary education.

(3) In addition to equivalent education defined within this section, a family home child care licensee licensed prior to March 31, 2012 may meet the "equivalent education" requirement by achieving a level three rating in the early achievers program. Washington state's quality rating improvement system, prior to March 31, 2017.

WSR 13-17-076
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed August 16, 2013, 1:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-088.

Title of Rule and Other Identifying Information: WAC 170-03-0290 regarding stay of department of early learning (DEL) action and WAC 170-03-0300 regarding stay of summary suspension of child care license.

Hearing Location(s): DEL, Seattle Office, 3600 South Graham Street, Seattle, WA 98118, on September 24, 2013, at 6 p.m.; and DEL, Yakima Office, 111 South 2nd Avenue, Yakima, WA 98902, on September 25, 2013, at 6 p.m.

Date of Intended Adoption: Not earlier than September 25, 2013.

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

Assistance for Persons with Disabilities: Contact DEL rule coordinator by September 17, 2013, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify WAC 170-03-0290 regarding stay of DEL action and WAC 170-03-0300 regarding stay of summary suspension of child care license.

Reasons Supporting Proposal: The proposed rules clarify the procedure for requesting a stay of summary suspension of a child care license, the manner in which a stay is heard, and the grounds under which a stay may be granted or denied.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

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

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

August 16, 2013
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0290 Stay of DEL action. Only ((+)) ~~Except~~) as set forth in WAC 170-03-0300, at any point in the proceeding before OAH or the review judge, the appealing party may request that an ALJ or review judge stay (stop) a DEL action until there is a decision entered by the ALJ or review judge.

~~((2) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or is made for good cause. In finding good cause the ALJ must determine:~~

(a) ~~The party requesting the stay is likely to prevail in the hearing on the merits;~~

(b) ~~The party requesting the stay will suffer irreparable injury, if the stay is not granted; and~~

(c) ~~The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances of the case.)~~

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0300 Stay of summary suspension of child care license. (1) The department may immediately and summarily suspend a license when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) Pursuant to WAC 170-03-0040 and WAC 170-03-0050 a licensee may request a hearing to challenge the decision to summarily suspend a license. A licensee who contests a summary suspension of a license ~~((by the department))~~ may obtain a stay of the effective ~~((ness))~~ date of the ~~((at))~~ suspension ~~((order))~~ only as set forth in this section.

(3) It shall be the licensee's burden to establish that the stay is in the public interest and is made for good cause.

(4) ~~((3))~~ The licensee's ~~((may))~~ request for a stay of the summary suspension must be made by filing a motion for stay of summary suspension. The motion for stay of summary suspension must be filed with the initial request for hearing, or by subsequent motion ~~((including such a request in the request for hearing or in a subsequent motion))~~. The motion for stay, and documents and pleadings described in WAC 170-03-0300(5), shall be served on the Office of Administrative Hearings, and Attorney General's Office, by noon on the seventh day before the hearing, unless a shorter time is ordered. Reply affidavits or declarations shall be served on the licensee's attorney, or representative, by noon on the day prior to the hearing. If unrepresented, the reply affidavits or declarations shall be served on the licensee.

(5) The motion ~~((request))~~ for stay must be accompanied by a statement of grounds justifying the stay and a description of evidence setting forth the factual basis upon which the request is based. The decision to grant or deny the request for a stay shall be based on

(a) Legal authority; and

(b) Affidavits or declarations signed under penalty of perjury.

(6) The hearing officer shall not allow the presentation of oral testimony at a stay hearing except under the following circumstances:

(a) The party seeking the opportunity to offer oral testimony must file a motion for permission to offer oral testimony. The decision to grant or deny the motion must be based on affidavits filed in support of or opposition to the motion to offer oral testimony.

(b) Oral testimony shall only be permitted if substantial evidence has been presented establishing that the failure to allow oral testimony will deny the moving party the opportunity for a fair stay hearing.

(7) ~~((4))~~ Upon receipt of a motion ~~((request))~~ for a stay, the ALJ shall ~~((will))~~ schedule a hearing on the motion, not less than seven days from the date the request is received by the Office of Administrative Hearings ~~((on the request. The hearing may be combined with a prehearing conference. If it appears that a hearing on the merits and issues of the case should be consolidated with the request for a stay, the ALJ may advance the hearing date on its own initiative or by request of the parties))~~.

(8) ~~((5))~~ The ALJ shall not grant the motion for ~~((#))~~ stay unless the ALJ makes specific findings that the stay is in the public interest and ~~((or))~~ is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the merits of the licensing action;

(b) The licensee will suffer irreparable injury ~~((;))~~ if the stay is not granted; and

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license.

(d) Economic hardship of itself shall be an insufficient reason for a finding of irreparable injury under WAC 170-03-0300 (8)(b).

~~((6) Economic hardship of itself shall be an insufficient reason for a stay of a suspension of a license.)~~

(9) ~~((7))~~ Unless otherwise stipulated by the parties, the ALJ, after granting or denying a motion ~~((request))~~ for ~~((#))~~ stay, will expedite the hearing and decision on the merits.

(10) ~~((8))~~ The decision on the motion ~~((request))~~ for ~~((the))~~ stay is subject to review by the review judge at the request of either DEL or the licensee. The request for review must be filed not later than seven days following the date the decision on the motion ~~((request))~~ for stay is mailed by OAH to the parties.

(11) ~~((9))~~ A request for review by the review judge shall be promptly determined. The decision on the request for review by the review judge shall not be subject to judicial review.

WSR 13-17-082

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 19, 2013, 11:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-053.

Title of Rule and Other Identifying Information: WAC 392-121-182 Alternative learning experience requirements.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on September 25, 2013, at 1:00 p.m.

Date of Intended Adoption: September 26, 2013.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-

mail becky.mclean@k12.wa.us, fax (360) 664-3683, by September 25, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin by September 25, 2013, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 392-121-182 requires updating to clarify questions on current requirements and to address changes as a result of passage of ESB [ESSB] 5946.

Reasons Supporting Proposal: The changes include the following:

- Removes the rules around differential funding (subsection (8)), as these were designed to implement the funding cut that ended on June 30, 2013.
- Removes all time requirements from the weekly contact rules, as required by ESB [ESSB] 5946.
- Allows schools to forgo direct personal contact as a part of the monthly evaluation for students making satisfactory progress after at least one month.
- Creates the role of "school-based support staff" that districts may use to fulfill the requirements for students enrolled in online courses.
- Other changes and adjustments to streamline the implementation, recordkeeping, and reporting for alternative learning experience programs.

Statutory Authority for Adoption: RCW 28A.150-290(1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

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.

August 19, 2013

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 12-17-107, filed 8/20/12, effective 9/20/12)

WAC 392-121-182 Alternative learning experience requirements. (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience, including an alternative learning experience online program as defined in RCW 28A.150.262. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course work, that is a delivery method for the program of basic education and is:

~~(A) ((A course or a set of courses developed by a certificated teacher and documented in an individual written student learning plan for any student who meets the definition for enrollment specified by WAC 392-121-106. A student may enroll part-time in an alternative learning experience. Such enrollment is subject to the provisions of RCW 28A-150.350 and chapter 392-134 WAC; and~~

~~(B) The student pursues the requirements of the written student learning plan))~~ Provided in whole or in part independently from a regular classroom setting or schedule, but ~~((the learning plan))~~ may include some components of direct instruction; ~~(and~~

~~(C) The student's learning is))~~ (B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or under contract as permitted by applicable rules; and

(C) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's policy and this chapter.

(ii) The ~~((broad))~~ categories of alternative learning experience ~~((programs include, but))~~ courses are ~~((not limited to)):~~

(A) "Online ((programs)) course" means an alternative learning experience course that has the same meaning as ((defined)) provided in RCW ((28A.150.262;

~~(B) Parent partnership programs that include significant participation and partnership by parents and families in the design and implementation of a student's learning experience; and~~

~~(C) Contract-based learning programs;~~

~~(b))~~ 28A.250.010.

(B) "Remote course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for less than twenty percent of the total weekly time for the course.

(C) "Site-based course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for at least twenty percent of the total weekly time for the course.

(b) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work.

(c) "Certificated teacher" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

~~((e) "Written student learning plan" means a written plan for learning that is developed and approved by a certificated teacher and defines the requirements of an individual student's alternative learning experience. The written student learning plan must include at least the following elements:~~

~~(i) A beginning and ending date for the student's alternative learning experience;~~

~~(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;~~

~~(iii) A description of how weekly direct personal contact requirements will be fulfilled;~~

~~(iv) A description of each alternative learning experience course included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or program. Courses must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;~~

~~(v) Identification of the certificated teacher responsible for each course included as part of the plan;~~

~~(vi) Identification of all instructional materials that will be used to complete the learning plan; and~~

~~(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;~~

~~(viii) Identification of whether each alternative learning experience course meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district. For each high school alternative learning experience course, the written student learning plan must specify whether the course meets state and district graduation requirements.))~~

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Must be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "~~(Satisfactory progress)~~ In-person instructional contact" means face-to-face contact between a certificated teacher (~~(has determined that a student's progress toward achieving the specific)~~) and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning (~~(goals and performance objectives specified)~~) activities or requirements identified in the written student learning plan (~~(is satisfactory. The evaluation of satisfactory progress is conducted in a manner consistent with school district student evaluation or grading procedures, and is based on the professional judgment of a certificated teacher)~~); and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher. At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of (~~direct personal~~) weekly contact for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which (~~direct personal~~) weekly contact is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(h) "Satisfactory progress" means a determination made in accordance with subsection (4)(c) that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory;

(i) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least three days when a district's schools are in session;

(j) "School-based support staff" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate.

(k) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

((h)) (l) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

((ii) Related to an alternative learning experience course identified in the written student learning plan. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students.

(i) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(j) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan. ((In-person instructional contact may be accomplished in a group setting between the teacher and multiple students.

(k) "School week") (m) "Total weekly time" means ((any seven-day calendar period starting with Sunday and continuing through Saturday)) the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan.

(n) "Written student learning plan" means a written plan for learning that includes at least ((three days when a district's schools are in session)) the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district.

(4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact((:

(i) Direct personal contact)) with a certificated teacher at least once a school week((:)) until the student completes all

course objectives or otherwise meets the requirements of the learning plan(~~(-or~~

~~(ii))~~);

~~(i) Direct personal contact; or~~

~~(ii) In-person instructional contact ((according to the following time requirements:~~

~~(A) Fifteen minutes per school week for students whose learning plan includes an estimate of five hours per school week or less;~~

~~(B) Thirty minutes per school week for students whose learning plan includes an estimate of more than five hours per week but less than sixteen hours per week; and~~

~~(C) One hour for students whose learning plan includes an estimate of more than fifteen hours per week); or~~

~~((iii) For students whose written student learning plan includes only online courses as defined by RCW 28A.250.010;)) (iii) Synchronous digital instructional contact ((according to the following time requirements:~~

~~(A) Fifteen minutes per school week for students whose learning plan includes an estimate of five hours per school week or less;~~

~~(B) Thirty minutes per school week for students whose learning plan includes an estimate of more than five hours per week but less than sixteen hours per week; and~~

~~(C) One hour for students whose learning plan includes an estimate of more than fifteen hours per week)).~~

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher (~~(and)~~) or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section. The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher.

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts must not claim funding for the subsequent month for a student who was not evaluated within that time frame.

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student(~~(-)~~) with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

~~((iii))~~ (v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

~~((iv))~~ (vi) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory. School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress. The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(vii) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not required if the evaluation is delivered within the last five school days of the school year.

~~((iv))~~ (viii) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district.

(5) Required school district board policies for alternative learning experiences: The board of directors of a school district claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) responsible for overseeing the district's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

(6) Alternative learning experience implementation requirements:

(a) School districts that offer alternative learning experience~~(s)~~ courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience~~(s)~~ courses or course work for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experience~~(s)~~ courses or course work is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience ~~((program))~~ course or course work.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experience~~(s)~~ courses or course work must be consistent in quality with those available to the district's overall student population.

(g) Instructional materials used in alternative learning experience~~(s)~~ courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience ~~((programs))~~ courses or course work if the purchase is consistent with the district's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's regular instructional program. Items so purchased remain the property of the school district upon program completion.

(i) School districts are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's regular instructional program. This prohibition extends to a district's contracted providers of alternative learning experience programs, and each district shall be responsible for monitoring the compliance of its contracted providers. ~~((However,))~~ Nothing ((in this subsection)) herein shall:

(i) Prohibit~~(s)~~ school districts from contracting with school district employees to provide services or experiences to students; or

(ii) Prohibit school districts from contracting with online providers approved by the office of the superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Requires school districts that contract with school district employees to provide services or experiences to students, or with online providers approved by the office of the superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide substantially similar experiences and services under this subsection.

(j)(i) A school district that provides ~~((one or more))~~ alternative learning experience~~(s)~~ courses or course work to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district and made available for audit.

(ii) In the event a school district cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district or the school district contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

~~(n) ((State funded alternative learning experience online programs must be accredited by the Northwest Accreditation Commission or another national, regional, or state accreditation program listed by the office of superintendent of public instruction on its web site.~~

~~(o))~~ School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences.

School districts enrolling such students in alternative learning experiences are subject to all school district duties and liabilities pertaining to such students for the full school year, including ensuring the student's compulsory attendance pursuant to chapter 28A.225 RCW, until such time as the student has actually enrolled in another school district, or has otherwise met the mandatory attendance requirements specified by RCW 28A.225.010.

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(r) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, school districts offering or contracting to offer alternative learning experience courses must pay costs associated with a biennial measure of student outcomes and financial audit of the district's alternative learning experience courses by the office of the state auditor.

(7) Enrollment reporting procedures: Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be

included by the school district in the subsequent month's enrollment count (~~for the month of the evaluation that showed the lack of satisfactory progress~~).

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan includes an ending date that is the last school day in May.

(f) Students who graduate in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar must identify a May graduation date.

(ii) The students' written student learning plan must include an ending date that is the last day of school for seniors in May.

(g) School districts claiming alternative learning experiences students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

~~(8) (**Differentiated funding:** For the 2011-12 and 2012-13 school year, school districts reporting student enrollment pursuant to the requirements of this section shall gener-~~

ate and receive funding at eighty percent of the formula funding that would have been generated under the state basic education formula for such enrollment unless the following conditions are met, in which case school districts shall generate and receive funding at ninety percent of the formula funding:

(a) For alternative learning experience online programs under RCW 28A.150.262, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives either:

(i) Face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in (d) of this subsection; or

(ii) Synchronous digital instructional contact time from a certificated teacher according to the criteria identified in (d) of this subsection if the student's written student learning plan includes only online courses as defined by RCW 28A.250.010.

(b) For all other types of alternative learning experience programs, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in (d) of this subsection;

(c) The instructional contact time must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan;

(d) Using the estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan, as required in subsection (3)(c)(ii) of this section:

(i) For students whose learning plan includes an estimate of five hours per school week or less, on average at least fifteen minutes of contact per school week during each month of reported enrollment for the student;

(ii) For students whose learning plan includes an estimate of more than five hours per school week but less than sixteen hours per school week, on average at least thirty minutes of contact per school week during each month of reported enrollment for the student;

(iii) For students whose learning plan includes an estimate of more than fifteen hours per school week, on average at least one hour of contact per school week during each month of reported enrollment for the student.

~~(9))~~ **Assessment requirements:**

(a) All students enrolled in alternative learning experience ~~(s)~~ courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not

required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident alternative learning experience ~~((schools, programs, or))~~ courses or course work who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, arranging for any allowable testing accommodations, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

~~((10))~~ **Program evaluation requirements:** School districts offering alternative learning experiences must engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation must follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

~~(11))~~ **(9) Reporting requirements:**

(a) Each school district offering alternative learning experience ~~(s)~~ courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences as well as information about the resident and serving districts of such students.

(b) Each school district offering alternative learning experience ~~(s)~~ courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's regular instructional program.

(c) Each school district offering alternative learning experience ~~(s)~~ courses or course work must ~~((report))~~ annu-

ally report the following to the superintendent of public instruction ((on the types of programs and course offerings subject to this section. The annual report shall identify)):

(i) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program(~~(-The annual report shall))~~; and

(ii) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

~~((12))~~ (d) Each school district offering alternative learning experience courses must report all required information to the office of the superintendent of public instruction's Comprehensive Education Data and Research System under RCW 28A.300.500. Beginning with the 2013-14 school year, school districts must designate alternative learning experience courses as such when reporting course information to the Comprehensive Education Data and Research System.

(10) Documentation and record retention requirements: School districts claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection ~~((11))~~ (9) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of weekly contact required by subsection (4) of this section.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and synchronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of ((direct personal)) contact must include the date of the ((direct personal)) contact, the method of communication by which the ((direct personal)) contact was accomplished, and documentation to support the subject of the communication.

~~((ii) For students receiving either in-person instructional contact time or synchronous digital instructional contact time, evidence may include classroom attendance records;))~~

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; and

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section(~~(-and~~

~~(j) Evidence of face-to-face contact required in subsection (8)(a) of this section)).~~

WSR 13-17-085

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed August 19, 2013, 1:35 p.m.]

Continuance of WSR 13-13-085.

Preproposal statement of inquiry was filed as WSR 13-10-043 on April 25, 2013.

Title of Rule and Other Identifying Information: Wildlife-interaction regulations, chapter 232-36 WAC.

Hearing Location(s): The public hearing on this rule proposal was held on August 2-3, 2013. The department is extending the deadline for written comments on these rules to September 20, 2013.

Date of Intended Adoption: On or after October 4, 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 September 20, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by September 20, 2013, (360) 902-2207 or TTY 1-800-833-6388.

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, 77.12.047, 77.12.240, chapter 77.36 RCW, and ESSB [E2SSB] 5193.

Statute Being Implemented: RCW 77.04.012, 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, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2693; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

August 19, 2013

Lori Preuss

WSR 13-17-086
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY
 [Filed August 19, 2013, 1:38 p.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Revise SRCAA Regulation I, Article X, Section 10.06 – Registration and Operating Permit Fees For Air Contaminant Sources.

Hearing Location(s): Spokane Regional Clean Air Agency (SRCAA), 3104 East Augusta, Spokane, WA 99207, on October 3, 2013, at 9:30 a.m.

Date of Intended Adoption: October 3, 2013.

Submit Written Comments to: Joe Southwell, 3104 East Augusta, Spokane, WA 99207, e-mail jsouthwell@spokane cleanair.org, fax (509) 477-6828, by October 2, 2013.

Assistance for Persons with Disabilities: Contact Barbara Nelson by October 2, 2013, (509) 477-4727 ext. 116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose: Revise SRCAA Regulation I, Article X, Section 10.06 to move SRCAA's air operating permit (AOP) fee into SRCAA's consolidated fee schedule program, and raise the emission fee component of the AOP fee from \$31.11/ton to \$58/ton. Additionally, remove references to Washington emission data system fees in Section 10.06.B, as these fees are no longer assessed.

Anticipated Effects: The proposed regulation fee changes will allow SRCAA to address and/or reconcile any required AOP fee changes on an annual basis, pending public notice and comment, and with board approval. As AOP program fees must be not exceed program costs, the effect of raising the emission fee component will be to reduce the amount of time fee component of SRCAA's AOP fee.

Changes to Existing Rules:

1. Replace the specific AOP fee component costs and determination formulas, given in SRCAA Regulation I, Section 10.06 C. with reference to SRCAA's consolidated fee schedule, and placing the AOP fee component costs and determination formulas in SRCAA's consolidated fee schedule.

2. Remove references to WEDS fees in Section 10.06.B.

Reasons Supporting Proposal: The intent of the proposal is to give a greater weighting of emissions in determining annual AOP fees.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW; 42 U.S.C. 7401 et seq. and 42 U.S.C. 7412.

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: SRCAA's AOP program, a federally mandated program delegated to SRCAA, commenced in 1994. The AOP program is mandated to be at full cost recovery. The proposed changes in the AOP regulation will not change the total amount of fees assessed, but rather will revised [revise] how individual source AOP fees will be determined, with a

greater weighting on emissions from the individual source (i.e., increase in \$/ton emission fee), and corresponding decrease in the weighting of agency time spent on the individual source (i.e., decrease in the time fee component of the fee).

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Joe Southwell, 3104 East Augusta, Spokane, WA 99207, (509) 477-4727; Implementation: April Westby, 3104 East Augusta, Spokane, WA 99207, (509) 477-4727; and Enforcement: Barbara Nelson, 3104 East Augusta, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution control authority rule. Chapter 19.85 RCW does not apply to local air pollution control authority rule development/amendments.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule amendment.

August 19, 2013
 Joe R. Southwell
 Environmental Engineer

AMENDATORY SECTION

REGULATION I, ARTICLE X, SECTION 10.06

SECTION 10.06 REGISTRATION AND OPERATING PERMIT FEES FOR AIR CONTAMINANT SOURCES

A. Each source required by Article IV, Section 4.01 to be registered, each air operating permit source, and each source required by Article V, Section 5.02 to obtain an approved Notice of Construction and Application for Approval is subject to an annual fee for each calendar year, or portion of each calendar year, during which it operates. The owner or operator shall pay the fee, pursuant to the requirements in Section 10.02. Fees received pursuant to the registration program or the operating permit program shall not exceed the actual costs of program administration.

B. The annual fee for each source required by Article IV, Section 4.01 to be registered and that is not subject to Section 10.06.C. of this Regulation shall be determined by adding all of the applicable fees below:

1.	Registration Fee Categories	Fee	Fee Applicability
	Facility Fee ^A	Per the Fee Schedule	Per Source
	Emissions Fee ^B	Per the Fee Schedule	Per Ton
	Emission Point Fee ^C	Per the Fee Schedule	Per Stack/Point
	Synthetic Minor Fee ^D	Per the Fee Schedule	Per Source
	((WEDS Fee ^E	Per the Fee Schedule	Per Hour))

^A Each source is subject to the fee listed in the fee schedule.

^B The additional fee applies to each ton (rounded to the nearest one-tenth of a ton) of each criteria pollutant, volatile organic compound (VOC), and non-VOC toxic air pollutant emitted.

- C The additional fee applies to each stack and other emission points, including sources of fugitive emissions (e.g., fugitive dust emissions from crushing operations; storage piles; mixing and clean-up associated with surface coating). For gasoline stations, each gasoline tank vent is an emission point.
- D The additional fee applies to each Synthetic Minor.
- (E) The additional fee applies to each source required by the Agency to submit an annual emissions inventory for entry into the Washington Emission Data System (WEDS). SRCAA staff time spent processing and reviewing WEDS will be tracked in 15 minute increments and charged at the hourly rates provided in the fee schedule.)

2. The Board shall periodically review the fee schedule for registered sources and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs, including employee costs and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board may amend the fee schedule to more accurately recover program costs.

C. The annual fee for each air operating permit source shall be determined as follows:

1. The Board shall periodically review the fees for air operating permit sources and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs, including employee costs and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fees to more accurately recover program costs.

2. For sources that are subject to the air operating permit (AOP) program during any portion of the calendar year, the annual fee shall be determined by adding all of the applicable fees described below

- a. Annual base fee per the Fee Schedule.
- b. Emission fee per the Fee Schedule.
- c. SRCAA time fee, as determined per the Fee Schedule.
- d. AOP Program Cost Correction, as determined per the Fee Schedule.
- e. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined per the Fee Schedule.

- (a. Annual base fee of \$3,000;
- b. Emission fee of \$31.11 per ton of actual emissions from the previous calendar year;

e. SRCAA time fee, as determined by the following formula:

$$TFI = \frac{(HI + HG) \times RPC}{HI}$$

Where,
TFI is the SRCAA time fee for AOP source, I;
HI is the total SRCAA staff hours spent on AOP source, not including time spent on Notice of Construction application reviews, I;

HG is the total general hours SRCAA staff spent on the AOP program divided by the total number of sources subject to the AOP program during any portion of the calendar year;

RPC is the remaining SRCAA AOP program cost, calculated by subtracting the sum of the Section 10.06.C.2.a and b. fees from the total SRCAA AOP program costs; and

HT is the total number of hours SRCAA staff spent on the AOP program, including total time spent on the AOP sources and general hours spent on the AOP program.

Note: HI, HG, HT, and RPC are for the most recent SRCAA fiscal year.

Note: HI, HG, and HT are obtained from SRCAA time accounting records.

d. AOP Program Cost Correction, as determined by the following formula:

$$PCCI = \frac{AOP \text{ Program Cumulative Deficit or Surplus} \times FI}{FT}$$

Where,

PCCI is the AOP Program Cost Correction assessed to each AOP source, I;

AOP Program Cumulative Deficit or Surplus is the cumulative financial deficit or surplus for SRCAA's AOP program at the end of the most recent SRCAA fiscal year;

FI is the total individual fee assessed pursuant to Section 10.06.C.2.a., b., and c., of this Regulation; and

FT is the sum of all the individual fees assessed pursuant to Sections 10.06.C.2.a., b., and c. of this Regulation.

e. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined by the following formula:

$$I = \frac{FI \times AE}{FT}$$

Where,

I is the individual share of the assessment;

FI is the total individual fee assessed pursuant to Section 10.06.C.2.a., b., and c. of this Regulation;

AE is the total Ecology assessment pursuant to RCW 70.94.162(3); and

FT is the sum of all the individual fees assessed pursuant to Sections 10.06.C.2.a., b., and c. of this Regulation.

3. For affected units under Section 404 (Acid Deposition Standards) of the Federal Clean Air Act (42 USC 7401 et seq):

a. For time expended in carrying out the fee eligible activities specified in RCW 70.94, an hourly fee will be assessed pursuant to the fee schedule; and

b. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined by the following formula:

$$I = \frac{FI \times AE}{FT}$$

Where,

I is the individual share of the assessment;

~~FI is the total individual fee assessed pursuant to Section 10.06.C.3.a. of this Regulation;~~

~~AE is the total Ecology assessment pursuant to RCW 70.94.162(3); and~~

~~FT is the sum of all the individual fees assessed pursuant to Sections 10.06.C.3.a. of this Regulation.)~~

3. For affected units under Section 404 (Acid Deposition Standards) of the Federal Clean Air Act (42 USC 7401 et seq), the air operating permit fee shall be determined by adding all of the applicable fees described below:

a. For time expended in carrying out the fee eligible activities specified in RCW 70.94, an hourly fee will be assessed pursuant to the fee schedule; and

b. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined per the Fee Schedule.

~~((as determined by the following formula:~~

$$I = \frac{F_{FI} A_E}{F_T}$$

~~Where,~~

~~I is the individual share of the assessment;~~

~~FI is the total individual fee assessed pursuant to Section 10.06.C.3.a. of this Regulation;~~

~~AE is the total Ecology assessment pursuant to RCW 70.94.162(3); and~~

~~FT is the sum of all the individual fees assessed pursuant to Sections 10.06.C.3.a. of this Regulation.)~~

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 13-17-088
PROPOSED RULES
DEPARTMENT OF LICENSING
 [Filed August 20, 2013, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-075.

Title of Rule and Other Identifying Information: WAC 308-105-100, updating fee for the enhanced driver's license (EDL) and enhanced identicard (EID).

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on September 27, 2013, at 3:00 p.m.

Date of Intended Adoption: September 30, 2013.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 570-7048, by September 26, 2013.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by September 26, 2013, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making amends WAC 308-105-100 to prorate the EDL and EID fee to match the new renewal cycle.

Reasons Supporting Proposal: ESSB 6150 (2012) authorized the department to transition from a five-year driver's license and identicard renewal cycle to a six-year cycle. The bill prorated statutory driver's license and identicard fees accordingly. Under RCW 46.20.202(4), the additional fee for EDLs and EIDs are set by rule of the department.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.202.

Statute Being Implemented: RCW 46.20.202.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Julie Knittle, Highways-Licenses Building, Olympia, Washington, (360) 902-3763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

August 20, 2013
 Damon Monroe
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-22-031, filed 10/29/07, effective 11/29/07)

WAC 308-105-100 Fee. The fee for an enhanced driver's license or enhanced identicard is ~~((fifteen))~~ eighteen dollars. If the enhanced driver's license or enhanced identicard is issued, renewed, or extended for a period other than six years, the fee is three dollars for each year that the enhanced driver's license or enhanced identicard is issued, renewed, or extended. This fee is in addition to the regular drivers' license or identicard fees.

WSR 13-17-089
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket TV-130079—Filed August 20, 2013, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-057.

Title of Rule and Other Identifying Information: This rule making proposes revisions to chapter 480-14 WAC, Common carriers, and chapter 480-15 WAC, Household goods carriers. The proposal revises the existing rules to allow the commission to cancel a carrier's operating authority for failure to maintain required liability insurance without first suspending the carrier's operating authority. The com-

mission also proposes to make a number of corrections and clarifications to the existing rules.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on October 11, 2013, 9:00 a.m.

Date of Intended Adoption: October 11, 2013.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by Monday, September 23, 2013. Please include "Docket TV-130079" in your comments.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by September 27, 2013, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal revises the existing rules to allow the commission to cancel a carrier's operating authority for failure to maintain required liability insurance without first suspending the carrier's operating authority. The commission also proposes to make a number of corrections and clarifications to the existing rules, including but not limited to, allowing a government issued photo identification in lieu of a driver's license; requiring leased vehicle drivers to comply with all safety and controlled substances rules; removing the requirement for a carrier to file a lease with the commission; adding "assault" to the list of crimes for which an application may be denied; and limiting a household goods provisional period to eighteen months.

Reasons Supporting Proposal: Companies will benefit from clearer, more accurate rules. In addition, companies will no longer receive multiple notices about a single action.

Statutory Authority for Adoption: RCW 80.01.040, 81.01.010 and 81.80.130.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Suzanne Stillwell, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1224; Implementation and Enforcement: Steven V. King, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1115.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not result in or impose more than minor costs. Because there will not be more than minor increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

August 20, 2013
Steven V. King
Executive Director
and Secretary

AMENDATORY SECTION (Amending WSR 09-22-057, filed 10/30/09, effective 11/30/09)

WAC 480-14-230 Suspension and cancellation of a permit. A common carrier may not operate any of its equipment while its permit is suspended or canceled.

(1) **Involuntary suspension.**

(a) The commission may suspend or cancel a (~~carrier~~) carrier's permit if the carrier fails to maintain evidence that it has (~~the required level of~~) insurance in effect for its operations as required by WAC 480-14-250.

(b) The commission will make a good faith effort to notify a carrier that its evidence of insurance is likely to become invalid. The commission (~~will~~) may suspend or cancel any carrier who fails to maintain evidence of current insurance as required by WAC 480-14-250, whether or not it is able to provide advance notice.

(2) **Voluntary cancellation.** A carrier may request that its permit be canceled. The commission will enter an order canceling the permit. The commission will reinstate the permit, provided the carrier meets current entry requirements, if the carrier applies for reinstatement and pays the application fee within ten months of cancellation.

(3) **Involuntary cancellation.** The commission may cancel a permit because the carrier fails to:

(a) Pay required regulatory fees.

(b) Demonstrate that the carrier has corrected the conditions leading to suspension within the time defined in the order of suspension.

(c) Provide information as required by the commission or submits false, misleading or inaccurate information.

(d) Maintain evidence of insurance as required by WAC 480-14-250.

(4) **Cancellation hearing.** The commission will hold a hearing prior to canceling a carrier's authority, pursuant to RCW 81.80.280, except when cancellation results from:

(a) Failure to maintain evidence of current insurance as required by WAC 480-14-250 and an adjudication or brief adjudication was held or was available to the carrier.

(b) Failure to correct causes of a suspension in which an adjudication or brief adjudication was held or was available to the carrier.

(c) A carrier whose permit is (~~cancelled~~) canceled may apply for reinstatement under WAC 480-14-220, or may apply for a new permit under WAC 480-14-180, if the carrier has corrected the causes of cancellation.

AMENDATORY SECTION (Amending WSR 09-22-057, filed 10/30/09, effective 11/30/09)

WAC 480-14-250 Insurance requirements. (1) **Required insurance coverage.** Each applicant for common carrier authority and each common carrier must file with the commission evidence of currently effective liability and property damage insurance written by a company authorized to write such insurance in the state of Washington, covering each motor vehicle as defined in RCW 81.80.010 used or to be used under the permit.

(a) For vehicles with gross vehicle weight ratings of ten thousand pounds or more, filings must be for the amount shown on the following table:

Category of Carrier Operation	Filing Required
1. Property (nonhazardous)	\$750,000
2. Hazardous substances, as defined in 49 Code of Federal Regulations (C.F.R.) 171.8 transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2 and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material, in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 C.F.R. 173.403	\$5,000,000
3. Oil listed in 49 C.F.R. 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 C.F.R. 171.8 and listed in 49 C.F.R. 172.101, but not mentioned in 2. above or in 4. below	\$1,000,000
4. Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material, as defined in 49 C.F.R. 173.403	\$5,000,000

(b) For vehicles with gross vehicle weight ratings less than ten thousand pounds, filings shall be for the amounts shown on the following table:

Category of Carrier Operation	Filing Required
1. Property (nonhazardous)	\$300,000
2. Property (hazardous); any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material, as defined in 49 C.F.R. 173.403	\$5,000,000

(c) Insurance requirements do not apply to taxicabs whose only operation subject to commission jurisdiction is the operation of small parcel general freight service under a permit issued pursuant to chapter 81.80 RCW. Those taxicabs must comply with the provisions of RCW 46.72.040 and 46.72.050 in lieu of the above. However, all carriers must comply with the reporting requirements of this section.

(d) The commission may dismiss an application or suspend or cancel a permit if a carrier does not file proof that such insurance is in full force and effect.

(e) Carriers must submit evidence of insurance by ~~((either))~~ a Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (Form E), Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G), or a written binder evidencing the required coverage. A binder may not be effective for longer than sixty days, during which time the carrier must file the Form E or Form G.

(2) **Continuing proof of insurance.** A carrier must file evidence of continued insurance with the commission not less than ten days prior to the termination date of the current insurance.

(3) **Insurance endorsement.** All liability and property damage insurance policies issued to common carriers must

carry a "uniform motor carrier bodily injury and property damage liability endorsement."

(4) **Insurance termination.** All insurance policies issued under the requirements of chapter 81.80 RCW must provide that the coverage continues in full force and effect unless and until canceled by at least thirty days' written notice served on the insured and the commission by the insurance company. The thirty days' notice must commence to run from the date notice is actually received by the commission.

(a) An insurance binder may be canceled on ten days' written notice.

(b) The carrier or carrier's insurance company must notify the commission of cancellation or expiration ~~((on forms prescribed by the commission))~~ by filing a Notice of Cancellation (Form K) no less than thirty days before the cancellation or expiration effective date.

(c) The carrier or carrier's insurance company must provide notice of cancellation or expiration not more than sixty days before the termination date, except binders which may be canceled on ten days' written notice.

AMENDATORY SECTION (Amending WSR 08-02-049, filed 12/27/07, effective 1/27/08)

WAC 480-15-065 Address or telephone change. If a carrier changes its physical or mailing business address, e-mail address or telephone number, it must immediately notify the commission in writing at the address listed in WAC ~~((480-15-060))~~ 480-07-125.

AMENDATORY SECTION (Amending WSR 09-24-104, filed 12/2/09, effective 1/2/10)

WAC 480-15-180 Carrier operations that require a household goods permit. A carrier must receive a permit from the commission before transporting household goods, for compensation, by motor vehicle ~~((including a rental truck))~~ over public roads between two points within the state, or before advertising, soliciting, offering, or entering into an agreement to transport household goods.

AMENDATORY SECTION (Amending WSR 12-13-007, filed 6/7/12, effective 7/8/12)

WAC 480-15-186 Application required for new authority to operate as a household goods carrier. An applicant must complete a household goods moving company permit application and meet the criteria for a provisional permit and, after the ~~((six-month))~~ provisional period has passed, meet the criteria for a permanent permit, as described in WAC ~~((480-15-185))~~ 480-15-305, to ~~((be eligible for any of the following:~~

~~((+))~~ receive new authority to operate as a household goods carrier.

~~((2) Transfer of existing authority, except as described in WAC 480-15-187. If the holder of a permit wishes to transfer the permit, the person or entity receiving the permit must file an application as described in this section. For the purposes of this section and WAC 480-15-187, the person or entity receiving the permit is the applicant.~~

~~((3) Acquisition of control of existing authority.~~

~~(4) Additional authority for an existing household goods permit.)~~

AMENDATORY SECTION (Amending WSR 12-13-007, filed 6/7/12, effective 7/8/12)

WAC 480-15-187 Transfer of an existing permit. (1)

If the holder of a permit wishes to transfer the permit, the person or entity receiving the permit must ~~((file an application as described in this section. For the purposes of WAC 480-15-186 and this section, the person or entity receiving the permit is the applicant))~~ complete a household goods moving company permit application on a form provided by the commission. The person or entity receiving the permit is the applicant. The applicant must meet the criteria for a provisional permit and, after the provisional period has passed, meet the criteria for a permanent permit as described in WAC 480-15-305 unless the applicant qualifies for the exceptions described in subsection (2) or (3) of this section.

(2) ~~If the transfer is due to one of the following reasons, the commission will grant ((an application to transfer existing)) permanent authority((, or acquire control of existing permanent authority,))~~ to the applicant without requiring a provisional permit, public notice, or comment ~~((#))~~ provided that the applicant is fit, willing, and able to provide service and the applicant has filed to transfer ~~((or acquire control of))~~ permanent authority for any one of the following reasons:

(a) A partnership has dissolved due to the death, bankruptcy or withdrawal of a partner and that partner's interest is being transferred to a spouse or to one or more remaining partners.

(b) A shareholder in a corporation has died and that shareholder's interest is being transferred to a surviving spouse or one or more surviving shareholders.

(c) A sole proprietor has died, the sole proprietor devised or bequeathed the company by will, and the applicant is seeking transfer of the permit in accordance with the bequest or devise set forth in the will.

(d) An individual has incorporated and the same individual remains the majority shareholder.

(e) An individual has added a partner but the same individual remains the majority partner.

(f) A corporation has dissolved and the interest is being transferred to the majority shareholder.

(g) A partnership has dissolved and the interest is being transferred to the majority partner.

(h) A partnership has incorporated, and the partners are the majority shareholders.

(i) Ownership is being transferred from one corporation to another corporation when both are wholly owned by the same shareholders.

~~((2))~~ (3) The commission will grant an application for permanent authority without requiring a provisional permit after the application has been published on the application docket subject to comment for thirty days if the applicant is fit, willing, and able to provide service, the applicant has filed to transfer ~~((or acquire))~~ control of permanent authority, and all of the following conditions exist:

(a) Ownership ~~((or control))~~ of a permit is being transferred to any shareholder, partner, family member, employee,

or other person familiar with the company's operations and the household goods moving services provided.

(b) The permit has been actively used by the current owner to provide household goods moving services during the twelve-month period prior to the application.

(c) The application includes a certified statement from the applicant and the current owner explaining why the transfer ~~((of ownership or control))~~ is necessary to ensure the company's economic viability.

(d) The application includes a certified statement from the applicant and the current owner describing the steps taken by the parties to ensure that safe operations and continuity of service to customers is maintained.

AMENDATORY SECTION (Amending WSR 12-13-007, filed 6/7/12, effective 7/8/12)

WAC 480-15-230 Application fees. Application fees are:

Type of Permit Application:	Fee:
Provisional and permanent authority. The fee for provisional, and then permanent, authority is a one-time fee	\$550.00
Transfer ((or acquisition)) of authority under WAC ((480-15-186 and)) 480-15-187	\$250.00
Permit reinstatement under WAC 480-15-450	\$250.00
Name change only	\$35.00

AMENDATORY SECTION (Amending WSR 12-13-007, filed 6/7/12, effective 7/8/12)

WAC 480-15-302 Provisional authority. The commission will grant provisional authority to any applicant that meets the following criteria:

(1) The applicant has properly completed the household goods moving company permit application.

(2) The application does not contain any indication of fraud, misrepresentation, or erroneous information.

(3) The applicant has provided a copy of a valid ~~((Washington state))~~ driver's license or government-issued photo identification card for each person named in the application associated with the proposed moving company.

(4) The applicant has provided evidence that the applicant possesses sufficient financial resources to operate a moving company. The commission will accept as evidence the completed financial statement form included in the household goods moving company permit application or the alternative documents listed on the financial statement form.

(5) The applicant has met the liability and cargo insurance requirements of WAC 480-15-530 and 480-15-550.

(6) The applicant has provided evidence of compliance with state tax, labor, employment, business, and vehicle licensing laws and rules. The commission will accept valid account numbers that staff can verify, showing the applicant has established accounts with other state agencies, as evidence.

(7) The applicant has provided evidence of its enrollment in a drug and alcohol testing program, or evidence that it has

in place its own drug and alcohol testing program, if required by WAC 480-15-570. The commission will accept proof of enrollment in a program, or a detailed description of the applicant's own program, as evidence.

(8) Commission staff has completed a criminal background check on each person named in the application associated with the proposed moving company.

(a) The commission will not grant provisional authority if any named person has, within the past five years, been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance.

(b) If a person named in the application has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance more than five years prior to the date of the application and the commission determines that the nature or extent of the crime(s) will likely interfere with the proper operation of a household goods moving company, the commission will deny operating authority to the applicant.

(9) The applicant owns or leases the equipment necessary to provide household goods moving services.

(10) The commission has not denied a household goods moving company permit application within the previous six months filed by the same applicant or by any other person named on the application.

(11) The commission has not canceled, for cause, a permit held by the applicant, or by any other person named on the application, within the previous ~~((one year))~~ twelve months.

(12) The applicant has filed with the application at least three completed statements of support for the proposed service.

(13) No other circumstances exist that cause the commission to deny the application.

AMENDATORY SECTION (Amending WSR 12-13-007, filed 6/7/12, effective 7/8/12)

WAC 480-15-305 Permanent authority. (1) The commission will grant permanent authority to any applicant that meets the following criteria:

~~((1))~~ (a) The applicant has met all of the criteria required for a provisional permit as described in WAC 480-15-302.

~~((2))~~ (b) The applicant has completed a provisional period of not less than six months and not more than eighteen months from the date the provisional permit was issued unless the commission determines that for good cause the provisional period should be extended beyond eighteen months. Good cause may include, among other circumstances, a carrier that has not yet made an intrastate move or a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating.

~~((3))~~ (c) The applicant has attended a commission-sponsored household goods carrier training class.

~~((4))~~ (d) The applicant has provided commission staff with evidence that the applicant has completed a criminal

background check on each person it employs or intends to employ ~~((that will have contact with a customer or a customer's residence))~~. The commission will not grant permanent authority if any employee has, within the past five years, been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance.

~~((5))~~ (e) The applicant has received a satisfactory safety rating in a safety review conducted by commission safety staff.

~~((6))~~ (f) The applicant has no outstanding commission-issued monetary penalties.

~~((7))~~ (g) The applicant has paid all outstanding fees or other amounts due to the commission.

~~((8))~~ (h) The applicant has met all other commission regulatory requirements, including any requirements set by statute, rule, tariff, or order.

~~((9))~~ (i) The applicant has no unresolved consumer complaints on file with the commission.

~~((10))~~ (j) No other circumstances exist that cause the commission to deny permanent authority.

(2) The commission will not grant permanent authority if an employee has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance more than five years prior to the date of the application and the commission determines that the nature or extent of the crime(s) will likely interfere with the proper operation of a household goods moving company.

(3) If the carrier has not completed the requirements for permanent authority within eighteen months of the date the provisional permit was issued, the commission will cancel the provisional permit and dismiss the application for permanent authority, unless the commission determines that for good cause the provisional period should be extended beyond eighteen months. Good cause may include, among other circumstances, a carrier that has not yet made an intrastate move or a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating.

AMENDATORY SECTION (Amending WSR 08-02-049, filed 12/27/07, effective 1/27/08)

WAC 480-15-400 Changing the name on a permit ~~((name))~~. (1) Carriers must file a name change application to change the name on a permit ~~((name, corporate name or trade name or))~~, to add a trade name to the permit, or remove a trade name from the permit.

(2) Carriers must include the application fee (as shown in WAC 480-15-230), copies of any corporate minutes authorizing the name change and proof that the carrier has properly registered the new name with the department of licensing, office of the secretary of state or other agencies as may be required.

(3) Carriers must also submit to the commission a Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (Form E) or Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety

Bond (Form G) in its changed name and proof of required cargo insurance (Certificate of Liability Insurance or Form H Uniform Motor Carrier Cargo Certification of Insurance) in its changed name.

~~((4))~~ (4) Carriers must file an application to transfer (~~or acquire control of~~) permanent authority if the name change is the result of a change in ownership or controlling interest.

~~((4))~~ (5) Carriers may not advertise or operate under the proposed name change until the commission approves the application.

AMENDATORY SECTION (Amending WSR 08-02-049, filed 12/27/07, effective 1/27/08)

WAC 480-15-420 Voluntary cancellation of a permit.

If a carrier no longer wants to use its permit, the carrier may send the commission a written request that it be canceled. The cancellation request must include the carrier's name, address and permit number. The commission will issue an order canceling the permit (~~(, effective on the date of the order)~~).

AMENDATORY SECTION (Amending WSR 08-02-049, filed 12/27/07, effective 1/27/08)

WAC 480-15-430 Involuntary suspension of a permit. (1) The commission may suspend a permit without the carrier's authorization for good cause. Good cause includes, but is not limited to, the carrier:

(a) Failing to maintain evidence of required cargo insurance coverage for all areas of its operations as required by WAC 480-15-550.

(b) Failing to maintain evidence of required liability insurance coverage for all areas of its operations as required by WAC 480-15-530.

(c) Failing to comply with the rates and rules contained in the commission-published tariff.

(d) Failing or refusing to comply with applicable laws and commission rules pertaining to operations of household goods carriers, including safety requirements set in law or rule.

(e) Allowing others to transport goods under the carrier's permit authority.

(f) Committing fraud.

(g) Failing to meet the requirements of WAC 480-15-555, Criminal background checks for prospective employees.

(2) The commission may suspend a permit without an opportunity for hearing if there is imminent danger to the public health, safety or welfare and there is insufficient time to conduct a hearing.

(3) The commission will send the carrier notice of its action to suspend the carrier's permit. The suspension begins on the effective date listed in the notice.

(4) A carrier may contest the suspension of its permit by requesting a hearing or brief adjudicative proceeding. Chapter 480-07 WAC describes the procedures for such hearings.

(5) The commission will lift the suspension of the permit after the carrier corrects all conditions leading to the suspension.

AMENDATORY SECTION (Amending WSR 09-24-104, filed 12/2/09, effective 1/2/10)

WAC 480-15-450 Involuntary cancellation of a permit. (1) The commission may cancel a permit without the carrier's authorization for good cause. Good cause includes, but is not limited to, the carrier:

(a) Failing to file an annual report or pay required regulatory fees.

(b) Failing to correct, within the time frame specified in the suspension order, all conditions that led to the suspension of a permit.

(c) Failing to maintain evidence of required liability insurance coverage for all areas of its operations as required by WAC 480-15-530.

(d) Failing to maintain evidence of required cargo insurance coverage for all areas of its operations as required by WAC 480-15-550.

(e) Failing (~~or refusing~~) to comply with applicable laws and commission rules pertaining to operations of household goods carriers, including safety requirements set in law or rule.

~~((4))~~ (f) Failing to supply information necessary to the commission for the performance of its regulatory functions when the commission requests the carrier to do so.

~~((6))~~ (g) Submitting false, misleading or inaccurate information.

~~((7))~~ (h) Allowing others to transport goods under the carrier's permit authority.

~~((8))~~ (i) Operating in a manner that constitutes unfair or deceptive business practices.

~~((9))~~ (j) Committing fraud.

(k) Failing to meet the requirements of WAC 480-15-555, Criminal background checks for prospective employees.

(2) The commission will hold a hearing prior to canceling a permit unless the permit is subject to cancellation because the carrier (~~failed, within the time frame specified by a suspension order, to correct the causes of the suspension. In that case:~~

~~(a) The commission will send the carrier notice of the date the commission will cancel a permit. The commission will enter an order canceling the permit thirty days after the service date of the notice.~~

~~(b) A carrier may contest the cancellation of its permit by requesting a hearing or brief adjudicative proceeding. Chapter 480-07 WAC describes the procedures for such hearings.)~~

(a) Failed to maintain evidence of current liability insurance as required by WAC 480-15-530 or failed to maintain evidence of current cargo insurance as required by WAC 480-15-550 and an adjudication or brief adjudication was held or was available to the carrier.

(b) Failed to correct causes of a suspension in which an adjudication or brief adjudication was held or was available to the carrier.

(3) When the commission has canceled a household goods carrier permit, the carrier must, when directed by the commission, provide notice to every customer that its permit has been canceled, and provide proof of such notice to the commission.

(4) If the permit is canceled and the carrier corrects all conditions that led to cancellation of the permit, the carrier may apply for reinstatement.

(a) To reinstate the permit within thirty days of cancellation, the carrier must file an application for reinstatement and pay the applicable reinstatement fees as stated in WAC 480-15-230.

(b) If the carrier files an application for reinstatement after thirty days of cancellation, the application will be considered in all aspects to be an application for new authority and will be subject to all terms and conditions specified in WAC ~~((480-15-240))~~ 480-15-302 for new entrants.

AMENDATORY SECTION (Amending WSR 08-02-049, filed 12/27/07, effective 1/27/08)

WAC 480-15-530 Public liability and property damage insurance. (1) Before operating under a household goods permit, carriers must have public liability and property damage insurance covering every motor vehicle used in its operations. The commission will not issue a permit for authority to operate without acceptable proof of required insurance coverage. Carriers must maintain the required public liability and property damage insurance at all times for every motor vehicle used in Washington intrastate operations.

(a) The policy must be written by an insurance company authorized to write insurance in Washington state.

(b) The policy must include the Uniform Motor Carrier Bodily Injury and Property Damage Liability ~~((Endorsement, Form F))~~ Certificate of Insurance (Form E) or Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G).

(c) The commission ~~((will))~~ may suspend ~~((for thirty days and subsequently))~~ or cancel the permit of any carrier operating without proof of required insurance coverage.

(2) The minimum limits of required public liability and property damage insurance for motor vehicles operated by household goods carriers are as follows:

(a) At least three hundred thousand dollars in combined single limit coverage for motor vehicles with a gross vehicle weight rating of less than ten thousand pounds.

(b) At least seven hundred fifty thousand dollars in combined single limit coverage for motor vehicles with a gross vehicle weight rating of ten thousand pounds or more.

(3) Carriers must file a Uniform Motor Carrier Bodily Injury and Property Damage ~~((and Public))~~ Liability Certificate of Insurance (Form E) or Uniform Motor Carrier Bodily Injury and Property Damage ~~((and Public))~~ Liability Surety Bond (Form G) as a condition of maintaining a household goods permit.

(a) The Form E or Form G filing must be issued in exactly the same name as the carrier's permit.

(b) The Form E or Form G filing must be continuous, until canceled by a Notice of Cancellation (Form K) filed with the commission no less than thirty days before the cancellation effective date.

(4)(a) The commission will accept an insurance certificate or binder for up to sixty days. A certificate or binder may be canceled by filing written notice with the commission at least ten days before the cancellation effective date. A certifi-

cate or binder must be replaced by a Form E or Form G within sixty days of filing, or before the expiration date, whichever occurs first.

~~((+))~~ (b) Certificates or binders must include all of the following:

(i) The commission as the named certificate holder.

(ii) The carrier's name, exactly as it appears on the permit or application, as the insured.

(iii) The insurance company name.

(iv) The insurance policy number.

(v) The effective and expiration dates.

(vi) The insurance limits of coverage.

AMENDATORY SECTION (Amending WSR 08-02-049, filed 12/27/07, effective 1/27/08)

WAC 480-15-550 Cargo insurance. (1) Carriers must have cargo insurance coverage at the levels prescribed in subsection (2) of this section to protect all household goods transported under the permit. The commission will not issue a permit for authority to operate without acceptable proof of required cargo insurance coverage.

(2) The minimum limits of required cargo insurance are:

(a) Ten thousand dollars for household goods transported in motor vehicles with a gross vehicle weight rating of less than ten thousand pounds.

(b) Twenty thousand dollars for household goods transported in motor vehicles with a gross vehicle weight rating of ten thousand pounds or more.

(3) Carriers must provide proof of required cargo insurance (Certificate of Liability Insurance or Form H Uniform Motor Carrier Cargo Certification of Insurance) when they apply for a permit. In addition, carriers must have proof of cargo insurance at their main office available for inspection by commission representatives.

(4) The commission may suspend ~~((and subsequently))~~ or cancel the permit of any carrier operating without required cargo insurance coverage.

NEW SECTION

WAC 480-15-555 Criminal background checks for prospective employees. (1) Each carrier must complete a criminal background check for every person the carrier intends to hire.

(2) The carrier must keep evidence that it has completed a criminal background check for every person the carrier intends to hire for as long as that person is employed and for three years thereafter.

(3) No carrier may hire a person who has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance within the past five years.

AMENDATORY SECTION (Amending WSR 08-02-049, filed 12/27/07, effective 1/27/08)

WAC 480-15-590 Leasing vehicles. ~~((+))~~ A carrier must ~~((file))~~ enter into an equipment lease agreement ~~((and receive commission approval))~~

motor vehicle. The carrier must ~~((meet all of the following requirements))~~ ensure that all of the following conditions are met:

- ~~((a) File a completed form provided by the commission or use an alternate form containing the same information.~~
- ~~(b) Sign the form and ensure the lessor signs the form.~~
- ~~(c) Submit two copies to the commission.~~
- ~~(d) Clearly mark "master lease" if the carrier intends to use a master lease instead of submitting individual leases.~~
- ~~(2) A carrier is not required to file a lease for approval on an emergency substitution of a disabled vehicle.)~~ (1) The carrier signs the form and ensures the lessor signs the form.
- (2) The carrier marks "master lease" if the carrier intends to use a master lease instead of individual leases.
- (3) A copy of the lease is carried in all leased motor vehicles.
- (4) Copies of all leases are kept in the carrier's permanent files for at least one year after the lease expires.
- (5) The carrier gives a copy of the lease to the owner of the leased motor vehicle.
- (6) The carrier takes possession, control and use of the motor vehicle during the period of the lease agreement.
- (7) The leased motor vehicle is properly insured as specified in WAC 480-15-530 and 480-15-550.
- (8) The carrier properly identifies the motor vehicle as specified in RCW 81.80.305.
- (9) The carrier charges appropriate tariff rates and charges.
- (10) The driver of the leased motor vehicle is on the carrier's payroll during the leased period.
- (11) The leased motor vehicle is operated in compliance with laws and rules as specified in WAC 480-15-560 and 480-15-570.
- (12) The driver of the leased motor vehicle is subject to the company's alcohol and controlled substance policies.
- (13) The carrier and the owner of the leased motor vehicle specify on the lease form who is responsible for all expenses relating to the leased motor vehicles.
- (14) The carrier complies with the terms of the lease.

AMENDATORY SECTION (Amending WSR 08-02-049, filed 12/27/07, effective 1/27/08)

WAC 480-15-620 Information household goods carriers must provide to customers. (1) Carriers must give each customer a copy of the commission publication, "~~((Year))~~ *Consumer Guide to Moving in Washington State*" at the time the carrier gives the customer a written estimate.

(2) The language contained in the publication is prescribed by the commission and may not be changed by the carrier.

(3) The commission will provide carriers the prescribed language but will not provide copies of the publication. Carriers are responsible for making sufficient copies for their needs.

(4) Carriers may access the prescribed language through the commission's web site at www.utc.wa.gov or by contacting the commission at 360-664-1222.

AMENDATORY SECTION (Amending WSR 08-02-049, filed 12/27/07, effective 1/27/08)

WAC 480-15-630 Estimates. Every carrier is required to provide a written estimate to every customer prior to moving a shipment of household goods and must issue a written supplemental estimate when required by commission rule or tariff. The carrier must provide estimates by following the requirements set in the commission-published tariff covering household goods movers. The initial estimate may be a binding or nonbinding estimate.

(1) A binding estimate is the promise of a guaranteed cost of a move from the carrier to the customer. The carrier is bound to charge only the amount of the estimate and no more.

(2) A nonbinding estimate is an estimate of the amount the carrier will charge to move a customer's household goods. The customer may pay charges in excess of the estimate.

(3) A supplemental estimate is in addition to any other estimate. A supplemental estimate is required if the circumstances surrounding the move change in a way that causes rates or charges to increase. The customer must accept and sign the supplemental estimate prior to additional work being performed.

(4) A carrier may provide the hourly rate it charges and the amount of time it believes it will take to make the move. A carrier may provide the rate per unit of weight it charges and the total weight it believes a shipment weighs. However, the carrier must provide a written binding or nonbinding estimate before making the move.

(5) A carrier may not conduct a move until it has visually inspected the goods to be shipped, unless the customer completes a web site calculation or hard-copy calculation sheet as described in subsection (6) of this section, and the carrier has provided a written binding or nonbinding estimate to the customer.

(6) A carrier may provide an estimate based on a customer-completed web site calculation or customer completed hard-copy calculation sheet if:

(a) The estimate contains all of the elements required by the tariff.

(b) The customer electronically "signs" the information provided on the web site by entering the customer's name and the date the information was filled out on the screen. The date must be present and must be entered by the customer.

(c) The carrier provides the customer with a current copy of the ~~((brochure))~~ commission publication, "~~((Year))~~ *Consumer Guide to Moving in Washington State*".

(d) The estimate discloses at the web site or on the hard-copy calculation sheet that:

(i) The estimate is not binding.

(ii) The cost of the move may exceed the estimate.

(iii) The customer will be required to pay up to one hundred ten percent of the estimate upon delivery. Carriers must allow customers at least thirty days from the date of delivery to pay amounts in excess of the one hundred ten percent.

(iv) The customer is not required to pay more than one hundred twenty-five percent of the estimate regardless of the total cost unless the carrier issues and the customer accepts a supplemental estimate.

(7) The carrier must complete the estimates as required by tariff.

(8) All written estimates must be signed and dated by both the carrier and customer prior to the move. If the carrier completes the estimate on the day of the move, the carrier may not charge the customer for travel time to the point of origin or the time spent completing the estimate.

AMENDATORY SECTION (Amending WSR 08-02-049, filed 12/27/07, effective 1/27/08)

WAC 480-15-900 Requirements for interstate operations. General requirements: No household goods carrier may operate any motor vehicle or combination of motor vehicles over the public roads of this state in interstate commerce unless the carrier has met all of the following requirements:

(1) Obtained the appropriate operating authority from the U.S. Department of Transportation (~~((USDOT))~~) Federal Motor Carrier Safety Administration (FMCSA) or its successor agency.

(2) Obtained valid insurance as required by (~~((USDOT))~~) FMCSA.

(3) Participated in any program administered by the commission for registering, paying fees or otherwise regulating interstate motor freight carriers as provided by (~~((USDOT))~~) FMCSA or its successor agency.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-15-600 Lease responsibilities.

WSR 13-17-095
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed August 20, 2013, 4:15 p.m.]

Original Notice.

Expedited Rule Making-Proposed notice was filed as WSR 13-07-079.

Title of Rule and Other Identifying Information: Chapter 16-232 WAC, Use restricted herbicides in certain counties.

Hearing Location(s): North Willapa Bay Grange Hall, 3198 State Route 105, Grayland, WA 98547, on September 25, 2013, at 1:00 p.m.

Date of Intended Adoption: October 9, 2013.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m. on September 25, 2013.

Assistance for Persons with Disabilities: Contact Maryann Connell, (360) 902-2012, by September 16, 2013, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal originated as expedited rule making (WSR 13-07-079) to update addresses and titles and to clarify some chemical compounds in WAC 16-232-410, 16-232-420, 16-232-430, and 16-232-450. The department received an objection to the use

of the expedited rule-making process under RCW 34.05.353; therefore the department is proceeding with rule making under RCW 34.05.320.

Reasons Supporting Proposal: This proposal is house-keeping in nature to make necessary address and name corrections. The proposed amendments will not change the effect of the rules.

Statutory Authority for Adoption: RCW 17.21.030 and chapter 34.05 RCW.

Statute Being Implemented: RCW 17.21.030.

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

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Robin Schoen-Nessa, Olympia, (360) 902-2038; Implementation: Cliff Weed, Olympia, (360) 902-2036; and Enforcement: Joel Kangiser, Olympia, (360) 902-1963.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal is house-keeping in nature and has no substantive changes to the rules.

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

August 20, 2013

Ted Maxwell

Assistant Director

AMENDATORY SECTION (Amending WSR 13-01-034, filed 12/11/12, effective 1/1/14)

WAC 16-232-410 What pesticides are restricted in the area under order? All formulations containing the active ingredient O,O-diethyl O-(3,5,6-trichloro-2-pyridinyl) phosphorothioate, commonly known as chlorpyrifos (CAS Number 2921-88-2) or the active ingredient O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate, commonly known as diazinon (CAS Number 333-41-5) are use restricted pesticides when applied to cranberries in the area under order.

AMENDATORY SECTION (Amending WSR 13-01-034, filed 12/11/12, effective 1/1/14)

WAC 16-232-420 What standards are adopted by WSDA? (1) The department adopts the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Practices Standards "Drainage Water Management" CODE 554 (~~((Sept.))~~ Nov. 2011); "SubSurface Drain" CODE 606 (Sept. 2011); "Surface Drain, Main or Lateral" CODE 608 (Nov. 2010); and "Underground Outlet" CODE 620 (Nov. 2010) as requirements for and restrictions on the use of pesticides containing chlorpyrifos or diazinon when applied to cranberries in the area under order.

(2) Copies of the adopted USDA NRCS Practice Standards can be requested by mail from: U.S. Department of Agriculture, 1400 Independence Ave., S.W., Washington, D. C. 20250 or from your local NRCS Office or can be found on the WSDA web site at: (~~((http://www.agr.wa.gov/pestfert/))~~) <http://agr.wa.gov/pestfert/>.

AMENDATORY SECTION (Amending WSR 13-01-034, filed 12/11/12, effective 1/1/14)

WAC 16-232-430 What are the restrictions on the use of pesticides containing chlorpyrifos or diazinon for ditches? (1) Chlorpyrifos or diazinon shall not be applied to cranberries unless all ditches immediately adjacent to the application and all other ditches that will be contacted by the application are adequately protected to prevent entry of chlorpyrifos or diazinon at the time of application.

(2) For the purpose of subsection (1) of this section, "adequately protected" means:

(a) Ditches are cribbed and covered according to USDA NRCS Practice Standards "Drainage Water Management" CODE 554 (~~((Sept.))~~ Nov. 2011); "SubSurface Drain" CODE 606 (Sept. 2011); "Surface Drain, Main or Lateral" CODE 608 (Nov. 2010); and "Underground Outlet" CODE 620 (Nov. 2010), or one of the functional equivalents below.

(i) A functional equivalent for ditch side walls is the installation of side walls with rigid material capable of maintaining ditch integrity for a period of no less than ten years.

(ii) A functional equivalent for ditch coverings is the installation of ditch coverings using rigid material capable of preventing entry of chlorpyrifos or diazinon either through chemigation activities or run-off from irrigation activities into ditches as described in subsection (1) of this section.

(b) Drainage culverts are installed and constructed according to USDA NRCS Practice Standard "Underground Outlet" CODE 620 (Nov. 2010).

(3) All ditches and culverts shall be maintained and kept in good repair as needed in order to achieve the requirements of subsection (1) of this section.

(4) Upon request, the department shall be provided with all available information related to the design, construction, and materials used to protect the ditch as described in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 13-01-034, filed 12/11/12, effective 1/1/14)

WAC 16-232-450 Can a variance to the requirements of this order be obtained in an emergency? (1) In the event of an emergency, as determined by the director, the department may issue permits for the use of chlorpyrifos or diazinon in the use restricted area in variation of any restrictions as defined in WAC 16-232-430 or 16-232-440. An emergency under this section may be declared if the director determines that the situation is:

(a) Urgent and unexpected; and

(b) The risk and amount of economic harm to the crop substantially outweighs the risk and amount of damage likely to occur to the environment if a variance permit is issued.

(2) Application for a permit may be made by e-mail to compliance@agr.wa.gov or by mail, fax, or in person to the Washington State Department of Agriculture, Pesticide Management Division, Natural Resources Building (NRB), Second Floor, 1111 Washington St. S.E., P.O. Box (~~(42589)~~) 42560, Olympia, WA 98504-2560, FAX: 360-902-2093. Permits will not be granted by telephone.

(3) The department may make on-site monitoring of the application a condition of any permit. A representative of the

department may condition, deny, or revoke a permit at any time, if the representative determines that the situation at the application site creates an unreasonable risk. In determining whether the situation at the application site creates an unreasonable risk, the representative may consider all relevant factors such as temperature, tides, precipitation, application type, pesticide formulation and application equipment, ditch cover condition, endangered species restrictions, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

WSR 13-17-099

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed August 21, 2013, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-079.

Title of Rule and Other Identifying Information: Health and safety regulations specific to Washington State University (WSU) Vancouver, chapter 504-37 WAC.

Hearing Location(s): French Ad 448J, WSU Pullman, Pullman, Washington and VECS 105, WSU Vancouver, Vancouver, Washington; on October 3, 2013, at 4:00 p.m.

Date of Intended Adoption: November 22, 2013.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail prf.forms@wsu.edu, fax (509) 335-3969, by October 3, 2013.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by October 1, 2013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WSU is adding health and safety regulations specific to WSU Vancouver. WSU Vancouver seeks to expand the tobacco-free area mandated by the Washington Clean Indoor Act (which prohibits smoking in public buildings and places of employment, as well as within twenty-five feet of doors, windows, and ventilation intakes), to include all campus grounds and state-owned vehicles and equipment.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Stephenson, Lieutenant, WSU Vancouver Police Department, Public Safety, Finance and Operations, Dengerink Administration 160, Vancouver, WA 98686-9600, (360) 546-9004; and Enforcement: Mel Netzhammer, Chancellor, WSU Vancouver, Dengerink Administration 230, Vancouver, WA 98686-9600, (360) 546-9581.

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

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

August 21, 2013
Ralph T. Jenks, Director
Procedures, Records, and Forms
University Rules Coordinator

Chapter 504-37 WAC

HEALTH AND SAFETY REGULATIONS SPECIFIC TO WASHINGTON STATE UNIVERSITY (WSU) VANCOUVER

NEW SECTION

WAC 504-37-010 Smoking and tobacco use—

Authority. Pursuant to RCW 28B.30.150(1), the Washington State University (WSU) board of regents is granted authority to establish rules and regulations for tobacco use on property owned, operated, and/or maintained by the university.

NEW SECTION

WAC 504-37-020 Smoking and tobacco products.

Washington State University Vancouver acknowledges the findings of the United States Surgeon General that tobacco use in any form, active and passive, is a significant health hazard. The university further recognizes that the United States Environmental Protection Agency classifies environmental tobacco smoke as a class A carcinogen. In light of these health risks, and in support of a safe and healthy learning/working environment, WSU Vancouver establishes the restrictions in this section, WAC 504-37-010, and 504-37-030, otherwise collectively referred to as the WSU Vancouver smoking and tobacco use policy.

(1) Smoking or other tobacco usage is not permitted within the perimeter of WSU Vancouver property. Smoking materials must be extinguished and disposed of prior to entering WSU Vancouver property or exiting vehicles. Improper disposal, including spitting smokeless tobacco or discarding cigarette butts on the ground or out of a vehicle, is not permitted.

(2) The WSU Vancouver smoking and tobacco use policy applies to all students, faculty, and staff or other persons using university facilities.

(3) The WSU Vancouver smoking and tobacco use policy is not intended to impede on institutional review board (IRB) research projects. IRB-approved research projects are exempt from this policy.

(4) Definitions. For the purposes of this chapter, the terms "tobacco products" and "premises" are defined as follows:

(a) Tobacco products. Cigarettes, cigars, pipes, hookah, all forms of smokeless tobacco, electronic cigarettes, clove cigarettes and other alternative products made primarily with tobacco.

(b) Premises. All buildings, grounds, state-owned vehicles and equipment (motor pool, maintenance) including, but

not limited to, parking lots, bus stops, county-owned and WSU-maintained streets or sidewalks, recreational fields and all open common areas within the WSU Vancouver campus.

(5) The sale and/or free distribution of tobacco products or tobacco-related merchandise is prohibited on university property.

(6) Sponsorship of campus events by tobacco-promoting organizations is prohibited.

(7) Advertisement of tobacco products at university events is prohibited regardless of sponsorship.

(8) Tobacco use on university property or improper disposal of smoking materials may result in disciplinary action. Employees may be subject to corrective or disciplinary action and students may be referred to the WSU Vancouver office of student conduct. Other violators may be trespassed from the WSU Vancouver campus and subject to other sanctions available to enforce the smoking and tobacco use policy.

(9) Signage: Signs declaring WSU Vancouver "tobacco-free" are to be posted at the campus entries and other conspicuous places.

NEW SECTION

WAC 504-37-030 Smoking and tobacco use—Communication and compliance.

(1) The enforcement of the smoking and tobacco use rules and regulations in this section, WAC 504-37-010 and 504-37-020 is the responsibility of campus public safety personnel with the assistance of all members of the WSU Vancouver community. Members of the WSU Vancouver community may notify public safety of repeat offenders and/or of disruptive behavior. The following WSU Vancouver persons and departments are responsible for ensuring that the WSU Vancouver smoking and tobacco use policy is communicated to employees, students, visitors and others in the WSU Vancouver community as indicated:

- (a) Human resources regarding employees;
- (b) Student affairs regarding students;
- (c) Department leads regarding contractors and other visitors;
- (d) Communications and scheduling offices for events with external visitors;
- (e) Facilities operations for outside contractors and vendors working on campus;
- (f) Public safety regarding campus visitors;
- (g) Chancellor's office regarding partner institutions.

(2) Each of the above responsible persons and departments may establish procedures and protocols, consistent with each other and the WSU Vancouver smoking and tobacco use policy, designed to eliminate tobacco use from campus, increase compliance, and assist tobacco users in availing themselves of tobacco dependency treatment options.

(3) Any person who repeatedly violates the WSU Vancouver smoking and tobacco use policy may be asked to leave the premises and/or may be removed and subject to trespass admonition. Employees may be subject to corrective or disciplinary action and students may be subject to student conduct action. Public safety officers are authorized to control, and regulate facilities use as prescribed by this policy.

(4) Any person interfering with a university public safety officer in the discharge of the WSU Vancouver smoking and tobacco use policy may be in violation of WSU Vancouver policy and state law (RCW).

WSR 13-17-100
PROPOSED RULES
OLYMPIC COLLEGE

[Filed August 21, 2013, 8:55 a.m.]

Continuance of WSR 13-11-063.

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

Title of Rule and Other Identifying Information: Withholding services for outstanding student debts, extension of intended adoption date.

Date of Intended Adoption: September 17, 2013.

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

Statute Being Implemented: Chapter 28B.50 RCW.

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

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

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

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

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

August 21, 2013
Thomas Oliver
Rules Coordinator

WSR 13-17-101
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 13-02—Filed August 21, 2013, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-101.

Title of Rule and Other Identifying Information: Rule amendment for chapter 173-224 WAC, Wastewater discharge permit fees.

Hearing Location(s): Videoconference hearings at the following: Ecology Northwest Regional Office, 3190 160th Avenue S.E., Room C1, Bellevue, WA 98008; Ecology Central Regional Office, 15 West Yakima Avenue, Room 309, Yakima, WA 98902; Ecology Eastern Regional Office, 4601 North Monroe Street, Room 1-SW-11, Spokane, WA 99205; Ecology Headquarters Building, 300 Desmond Drive, Room

0A-05, Lacey, WA 98504; on September 24, 2013, at 1:30 p. m.

Date of Intended Adoption: October 30, 2013.

Submit Written Comments to: Bev Poston, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail bpos461@ecy.wa.gov, fax (360) 407-7151, by October 1, 2013.

Assistance for Persons with Disabilities: Contact Bev Poston by September 5, 2013. If you have hearing loss, call TTY 771 or for Washington relay service if you have speech disability call (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase fees for some wastewater and stormwater permit fee categories by the following: 4.55 percent for state fiscal year (FY) 2014 and 4.63 percent for state FY 2015 as authorized in ecology's budget passed by the 2013 Washington state legislature. The fee categories subject to the fee increase include: Aquatic pest control, boatyards, dairies, concentrated animal feeding operations, construction stormwater individual and general permits, industrial stormwater individual and general permits, municipal stormwater permits, and municipal domestic wastewater treatment plants with residential equivalents greater than 250,000.

Ecology is also proposing to clarify some language without changing the effect of the rule.

Reasons Supporting Proposal: The fee increases will allow continued operation of the wastewater/stormwater permit program. Wastewater and stormwater are tools used by ecology to ensure that man-made activities that discharge into the various water bodies of the state are discharged at a level where they will not impair the water.

Statutory Authority for Adoption: RCW 90.48.465 Water pollution control. RCW 43.135.055 requires a majority vote of the legislature to raise or add fees. The 2013 legislature authorized ecology to increase fees by 4.55 percent for FY 2014 and 4.63 percent for FY 2015.

Statute Being Implemented: RCW 90.48.465 Water pollution control.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bev Poston, 300 Desmond Drive, Lacey, WA, (360) 407-6425.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 19.85 RCW does not apply to the adoption of a rule if it meets the following exemption language as described in RCW 34.05.310(4) that states (d) "rules that only correct typographical errors, make address or name changes or clarify language without changing its effect" and (f) "... rules that set or adjust fees or rates pursuant to legislative standards"

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 [(5)](b) states (iv) rules that only correct typographical errors, make address or name changes or clarify language without changing its effect and (vi) rules that set or adjust fees or rates pursuant to legislative standards are exempt from the requirements of RCW 34.05.328. Ecol-

ogy did not have any discretion in the amount of the fee change.

August 20, 2013
 Polly Zehm
 Deputy Director

AMENDATORY SECTION (Amending WSR 08-16-109, filed 8/5/08, effective 9/5/08)

WAC 173-224-030 Definitions. "Administrative expenses" means those costs associated with issuing and administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

"Aggregate production" means the mining or quarrying of sand, gravel, or rock, or the production of concrete, or asphalt or a combination thereof.

"Aluminum and magnesium reduction mills" means the electrolytic reduction of alumina or magnesium salts to produce aluminum or magnesium metal.

"Animal unit" means the following:

Animal Type	Number of Animals per Animal Unit
Dairy Cows	
Jersey Breed	
Milking Cow	0.900
Dry Cow	0.900
Heifer	0.220
Calf	0.220
Other Breeds	
Milking Cow	1.400
Dry Cow	1.000
Heifer	0.800
Calf	0.500
Feedlot Beef	0.877
Horses	0.500
Sheep	0.100
Swine for breeding	0.375
Swine for slaughter	0.110
Laying hens & pullets > 3 months	0.004
Broilers & pullets < 3 months	0.002

For those concentrated animal feeding operations not listed on the above table, the department will use 1,000 pounds of live animal weight and the weight of the type of animal in determining the number of animal units.

"Annual permit fee" means the fee charged by the department for annual expenses associated with activities specified in RCW 90.48.465. This annual fee is based on the state's fiscal year (July 1 - June 30).

"bbls/d" means barrels per day of feedstock for petroleum refineries.

"bins/yr" means total standard bins used during the last complete calendar year by a facility in the crop preparing industry. The bins measure approximately 47.5 inches x 47.4 inches x 29.5 inches and hold approximately 870 pounds of fruit.

"Chemical pulp mill w/chlorine bleaching" means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

"Combined food processing waste treatment facility" means a facility that treats wastewater from more than one separately permitted food processor and receives no domestic wastewater or waste from industrial sources other than food processing.

"Combined industrial waste treatment" means a facility which treats wastewater from more than one industry in any of the following categories: Inorganic chemicals, metal finishing, ore concentration, organic chemicals, or photofinishers.

"Combined sewer overflow (CSO)" means the event during which excess combined sewage flow caused by inflow is discharged from a combined sewer, rather than conveyed to the sewage treatment plant because either the capacity of the treatment plant or the combined sewer is exceeded.

"Concentrated animal feeding operation" means an "animal feeding operation" that meets the criteria in Appendix B of 40 C.F.R. 122 as presently enacted and any subsequent modifications thereto.

"Contaminants of concern" means a chemical for which an effluent limit is established (this does not include pH, flow, temperature, or other "nonchemical parameters"). Petroleum constituents will be considered as one contaminant of concern even if more than one effluent limit is established (e.g., Total Petroleum Hydrocarbons and BTEX).

"Crane" means a machine used for the hoisting and lifting of ship hulls.

"Crop preparing" means the preparation of fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.

"cu. yds/yr" means the total production from an aggregate production facility in cubic yards during the most recent completed calendar year.

"Department" means the department of ecology.

"Director" means the director of the department of ecology.

"Disturbed acres" means the total area which will be disturbed during all phases of the construction project or common plan of development or sale. This includes all clearing, grading, and excavating, and any other activity which disturbs the surface of the land.

"Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with any groundwater infiltration or surface waters that may be present.

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with such industrial waste as may be present.

"Existing operations" means those industrial operations requiring a wastewater discharge permit before July 1, 1993.

"EPA" means the United States Environmental Protection Agency.

"Fin fish rearing and hatching" means the raising of fin fish for fisheries enhancement or sale, by means of hatcheries, net pens, or other confined fish facilities.

"Flavor extraction" means the recovery of flavors or essential oils from organic products by steam distillation.

"Food processing" means the preparation of food for human or animal consumption or the preparation of animal byproducts, excluding crop preparing. This category includes, but is not limited to, fruit and vegetable processing, meat and poultry products processing, dairy products processing, beer production, rendering and animal feed production. Food processing wastewater treatment plants that treat wastes from only one separately permitted food processor must be treated as one facility for billing purposes.

"Gross revenue for business" means the gross income from Washington business activities as reported to the Washington state department of revenue.

"Hazardous waste clean up sites" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action other than RCRA corrective action sites.

"Industrial facility" means any facility not included in the definition of municipal/domestic facility.

"Industrial gross revenue" means the annual amount of the sales of goods and services produced using the processes regulated by the wastewater discharge permit.

"Industrial storm water" means an operation required to be covered under ecology's NPDES and state waste discharge baseline general permit for storm water discharges associated with industrial activities or modifications to that permit or having an individual wastewater permit for storm water only.

"MGD" means permitted flow expressed in million gallons per day.

"Manufacturing" means the making of goods and articles by hand or especially, by machinery into a manufactured product.

"Median household income" means the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

"Metal finishing" means the preparation of metal surfaces by means of electroplating, electroless plating, anodizing, coating (chromating, phosphating and coloring), chemical etching and milling, and printed circuit board manufacture.

"Municipal/domestic facility" means a publicly owned facility treating domestic wastewater together with any industrial wastes that may be present, or a privately owned facility treating solely domestic wastewater.

"Municipal gross revenue" means gross receipts from monthly, bimonthly, and/or quarterly user charges for sewer services received from all classes of customers;

Included in these user charges are user charges and fees based on wastewater constituents' strengths and characteristics including high-strength surcharges and charges based on

biochemical oxygen demand, suspended solids, oil and grease, toxicants, heavy metals, and flow, etc.

Municipal gross revenue includes charges for receipt and treatment of septic tank wastes, holding tank wastes, chemical toilet wastes, etc.

Municipal gross revenue includes all amounts received from other municipalities for sewage interception, treatment, collection, or disposal.

Gross revenue excludes:

Amounts derived by municipalities directly from taxes levied for the support or maintenance of sewer services.

Late charges, penalties for nontimely payment by customers, interest on late payments, and all other penalties and fines.

Permit fees and compliance monitoring fees for wastewater discharge permits issued by municipalities with local pretreatment programs. Permit fees which are charged to cover the cost of providing sewer service are not excluded from municipal gross revenue.

Receipts by a municipality of special assessments or installments thereof and interests and penalties thereon, and charges in lieu of assessments.

Connection charges.

Revenues from sales of by-products such as sludge, processed wastewater, etc.

"Municipality" means a city, town, county, district, association, or other public body created by or in accordance with state law and that has jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. Sec. 1288. State government agencies are not included in this definition.

"Noncontact cooling water with additives" means water used for cooling that does not come into direct contact with any raw materials, intermediate product, waste product or finished product, but which may contain chemicals or additives added by the permittee to control corrosion or fouling of the cooling system.

"Noncontact cooling water without additives" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product, and which does not contain chemicals added by the permittee. The noncontact cooling water fee without additives category applies to those facilities which discharge only noncontact cooling water and which have no other wastewater discharges required to be permitted under RCW 90.48.160, 90.48.162, and 90.48.260.

"Nonferrous metals forming" means the manufacturing of semifinished products from pure metal or metal alloys other than iron or steel or of metals not otherwise classified in WAC 173-224-040(2).

"Nonoperating aggregate site" means a location where previous mining or processing has occurred; that has not been fully reclaimed; that has no current mining or processing, and that may include stockpiles of raw materials or finished products. The permittee may add or withdraw raw materials or finished products from the stockpiles for transportation (~~off-site~~) off-site for processing, use, or sale and still be considered a nonoperating site. This definition can be found in ecology's *National Pollutant Discharge Elimination System and*

State Waste Discharge Permit for Process Water, Storm Water, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations.

"NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the department under Section 402 of the federal Clean Water Act and RCW 90.48.260.

"Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatever.

"Portable facility" means a facility that is designed for mobility and is moved from site to site for short term operations. A portable facility applies only to an asphalt batch plant, portable concrete batch plant and portable rock crusher.

"RCRA" means Resource Conservation Recovery Act clean up sites required to have a wastewater discharge permit resulting from a corrective action under relevant federal authorities or under chapters 70.105 and 70.105D RCW including chapters 173-303 and 173-340 WAC, and are not subject to cost recovery.

"Residential equivalent" means a single-family residence or a unit of sewer service that yields an amount of gross revenue equal to the annual user charge for a single-family residence. In cases where the permit holder does not maintain data on gross revenue, user charges, and/or the number of single-family residences that it serves, "residential equivalent" means an influent flow of two hundred fifty gallons per day.

"Seafood processing" means:

(a) Preparing fresh, cooked, canned, smoked, preserved, or frozen seafoods, including marine and freshwater animals

(fish, shellfish, crustaceans, etc.) and plants, for human or animal consumption; or

(b) Washing, shucking, and/or packaging of mollusks or crustaceans.

"Sewer service" means the activity of receiving sewage deposited into and carried off by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, and activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities.

"State waste discharge permit" means a permit required under RCW (~~98.48.260~~) 98.48.160.

"Storm water" means an industrial operation or construction activity discharging storm water runoff as defined in 40 C.F.R. 122.26 (b)(14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p)(2)(E).

"Tons/yr." means the total production from an asphalt production facility in tons during the most recent completed calendar year.

"Vegetable/bulb washing" means the washing, packing, and shipping of fresh vegetables and bulbs when there is no cooking or cutting of the product before packing.

AMENDATORY SECTION (Amending WSR 11-20-035, filed 9/27/11, effective 10/28/11)

WAC 173-224-040 Permit fee schedule. (1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An application fee will be assessed for RCRA sites regardless of whether a new permit is being issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is being modified.

(2) Industrial facility categories.

INDUSTRIAL FACILITY CATEGORIES	FY (2012) 2014 ANNUAL PERMIT FEE	FY (2013) 2015 ANNUAL PERMIT FEE & BEYOND
Aluminum Alloys	\$16,713.00	\$16,713.00
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	98,554.00	98,554.00
b. State Permit	49,279.00	49,279.00
Aluminum Forming	50,136.00	50,136.00
Aggregate Production - Individual Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,876.00	2,876.00
2. Nonoperating aggregate site (fee per site)	118.00	118.00
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	1,198.00	1,198.00
2. 50,000 - < 300,000 tons/yr.	2,877.00	2,877.00
3. 300,000 tons/yr. and greater	3,598.00	3,598.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2012)) 2014 ANNUAL PERMIT FEE	FY ((2013)) 2015 ANNUAL PERMIT FEE & BEYOND
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	1,198.00	1,198.00
2. 25,000 - < 200,000 cu. yds/yr.	2,877.00	2,877.00
3. 200,000 cu. yds/yr. and greater	3,598.00	3,598.00
The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	2,876.00	2,876.00
2. Asphalt	2,876.00	2,876.00
3. Concrete	2,876.00	2,876.00
Aggregate Production - General Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,012.00	2,012.00
2. Nonoperating aggregate site (fee per site)	83.00	83.00
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	840.00	840.00
2. 50,000 - < 300,000 tons/yr.	2,013.00	2,013.00
3. 300,000 tons/yr. and greater	2,517.00	2,517.00
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	840.00	840.00
2. 25,000 - < 200,000 cu. yds/yr.	2,013.00	2,013.00
3. 200,000 cu. yds/yr. and greater	2,517.00	2,517.00
The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	2,013.00	2,013.00
2. Asphalt	2,013.00	2,013.00
3. Concrete	2,013.00	2,013.00
Aquaculture		
a. Finfish hatching and rearing - Individual Permit	5,012.00	5,012.00
b. Finfish hatching and rearing - General Permit Coverage	3,511.00	3,511.00
c. Shellfish hatching	((182.00)) <u>190.00</u>	190.00
Aquatic Pest Control		
a. Irrigation Districts	((433.00)) <u>474.00</u>	((453.00)) <u>496.00</u>
b. Mosquito Control Districts	((433.00)) <u>474.00</u>	((453.00)) <u>496.00</u>
c. Invasive Moth Control	((433.00)) <u>474.00</u>	((453.00)) <u>496.00</u>
d. Aquatic Species Control & Eradication	((433.00)) <u>474.00</u>	((453.00)) <u>496.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2012)) 2014 ANNUAL PERMIT FEE	FY ((2013)) 2015 ANNUAL PERMIT FEE & BEYOND
e.	Oyster Growers	((433.00)) <u>474.00</u>	((453.00)) <u>496.00</u>
f.	Rotenone Control	((433.00)) <u>474.00</u>	((453.00)) <u>496.00</u>
Boat Yards - Individual Permit Coverage			
a.	With storm water only discharge	428.00	428.00
b.	All others	856.00	856.00
Boat Yards - General Permit Coverage			
a.	With storm water only discharge	((341.00)) <u>373.00</u>	((357.00)) <u>390.00</u>
b.	All others	((691.00)) <u>756.00</u>	((723.00)) <u>791.00</u>
Coal Mining and Preparation			
a.	< 200,000 tons per year	6,680.00	6,680.00
b.	200,000 - < 500,000 tons per year	15,042.00	15,042.00
c.	500,000 - < 1,000,000 tons per year	26,739.00	26,739.00
d.	1,000,000 tons per year and greater	50,136.00	50,136.00
Combined Industrial Waste Treatment			
a.	< 10,000 gpd	3,342.00	3,342.00
b.	10,000 - < 50,000 gpd	8,354.00	8,354.00
c.	50,000 - < 100,000 gpd	16,713.00	16,713.00
d.	100,000 - < 500,000 gpd	33,422.00	33,422.00
e.	500,000 gpd and greater	50,136.00	50,136.00
Combined Food Processing Waste Treatment Facilities			
		16,000.00	16,000.00
Combined Sewer Overflow System			
a.	< 50 acres	3,342.00	3,342.00
b.	50 - < 100 acres	8,354.00	8,354.00
c.	100 - < 500 acres	10,030.00	10,030.00
d.	500 acres and greater	13,368.00	13,368.00
Commercial Laundry			
		428.00	428.00
Concentrated Animal Feeding Operation			
a.	< 200 Animal Units	((196.00)) <u>214.00</u>	((205.00)) <u>224.00</u>
b.	200 - < 400 Animal Units	((491.00)) <u>537.00</u>	((514.00)) <u>562.00</u>
c.	400 - < 600 Animal Units	((984.00)) <u>1,076.00</u>	((1,029.00)) <u>1,126.00</u>
d.	600 - < 800 Animal Units	((1,474.00)) <u>1,612.00</u>	((1,542.00)) <u>1,687.00</u>
e.	800 Animal Units and greater	((1,968.00)) <u>2,153.00</u>	((2,059.00)) <u>2,253.00</u>
Crop Preparing - Individual Permit Coverage			
a.	0 - < 1,000 bins/yr.	333.00	333.00

INDUSTRIAL FACILITY CATEGORIES		FY ((2012)) 2014 ANNUAL PERMIT FEE	FY ((2013)) 2015 ANNUAL PERMIT FEE & BEYOND
b.	1,000 - < 5,000 bins/yr.	669.00	669.00
c.	5,000 - < 10,000 bins/yr.	1,337.00	1,337.00
d.	10,000 - < 15,000 bins/yr.	2,676.00	2,676.00
e.	15,000 - < 20,000 bins/yr.	4,425.00	4,425.00
f.	20,000 - < 25,000 bins/yr.	6,183.00	6,183.00
g.	25,000 - < 50,000 bins/yr.	8,271.00	8,271.00
h.	50,000 - < 75,000 bins/yr.	9,192.00	9,192.00
i.	75,000 - < 100,000 bins/yr.	10,694.00	10,694.00
j.	100,000 - < 125,000 bins/yr.	13,368.00	13,368.00
k.	125,000 - < 150,000 bins/yr.	16,712.00	16,712.00
l.	150,000 bins/yr. and greater	20,055.00	20,055.00
Crop Preparing - General Permit Coverage			
a.	0 - < 1,000 bins/yr.	232.00	232.00
b.	1,000 - < 5,000 bins/yr.	468.00	468.00
c.	5,000 - < 10,000 bins/yr.	937.00	937.00
d.	10,000 - < 15,000 bins/yr.	1,873.00	1,873.00
e.	15,000 - < 20,000 bins/yr.	3,100.00	3,100.00
f.	20,000 - < 25,000 bins/yr.	4,328.00	4,328.00
g.	25,000 - < 50,000 bins/yr.	5,788.00	5,788.00
h.	50,000 - < 75,000 bins/yr.	6,433.00	6,433.00
i.	75,000 - < 100,000 bins/yr.	7,481.00	7,481.00
j.	100,000 - < 125,000 bins/yr.	9,360.00	9,360.00
k.	125,000 - < 150,000 bins/yr.	11,698.00	11,698.00
l.	150,000 bins/yr. and greater	14,037.00	14,037.00
Dairies \$.50 per Animal Unit not to exceed \$((1,376.00)) 1,506.00 for FY ((2012)) 2014 and \$((1,440.00)) 1,576.00 for FY ((2013)) 2015 & beyond			
Facilities Not Otherwise Classified - Individual Permit Coverage			
a.	< 1,000 gpd	1,671.00	1,671.00
b.	1,000 - < 10,000 gpd	3,342.00	3,342.00
c.	10,000 - < 50,000 gpd	8,355.00	8,355.00
d.	50,000 - < 100,000 gpd	13,368.00	13,368.00
e.	100,000 - < 500,000 gpd	26,606.00	26,606.00
f.	500,000 - < 1,000,000 gpd	33,422.00	33,422.00
g.	1,000,000 gpd and greater	50,135.00	50,135.00
Facilities Not Otherwise Classified - General Permit Coverage			
a.	< 1,000 gpd	1,172.00	1,172.00
b.	1,000 - < 10,000 gpd	2,425.00	2,425.00
c.	10,000 - < 50,000 gpd	5,851.00	5,581.00
d.	50,000 - < 100,000 gpd	9,360.00	9,360.00
e.	100,000 - < 500,000 gpd	18,715.00	18,715.00
f.	500,000 - < 1,000,000 gpd	23,394.00	23,394.00

INDUSTRIAL FACILITY CATEGORIES		FY ((2012)) 2014 ANNUAL PERMIT FEE	FY ((2013)) 2015 ANNUAL PERMIT FEE & BEYOND
g.	1,000,000 gpd and greater	35,095.00	35,095.00
Flavor Extraction			
a.	Steam Distillation	171.00	171.00
Food Processing			
a.	< 1,000 gpd	1,670.00	1,670.00
b.	1,000 - < 10,000 gpd	4,259.00	4,259.00
c.	10,000 - < 50,000 gpd	7,604.00	7,604.00
d.	50,000 - < 100,000 gpd	11,948.00	11,948.00
e.	100,000 - < 250,000 gpd	16,712.00	16,712.00
f.	250,000 - < 500,000 gpd	21,977.00	21,977.00
g.	500,000 - < 750,000 gpd	27,572.00	27,572.00
h.	750,000 - < 1,000,000 gpd	33,422.00	33,422.00
i.	1,000,000 - < 2,500,000 gpd	41,175.00	41,175.00
j.	2,500,000 - < 5,000,000 gpd	45,957.00	45,957.00
k.	5,000,000 gpd and greater	50,136.00	50,136.00
Fuel and Chemical Storage			
a.	< 50,000 bbls	1,671.00	1,671.00
b.	50,000 - < 100,000 bbls	3,342.00	3,342.00
c.	100,000 - < 500,000 bbls	8,354.00	8,354.00
d.	500,000 bbls and greater	16,713.00	16,713.00
Hazardous Waste Clean Up Sites			
a.	Leaking Underground Storage Tanks (LUST)		
1.	State Permit	4,383.00	4,383.00
2.	NPDES Permit Issued pre 7/1/94	4,383.00	4,383.00
3.	NPDES Permit Issued post 7/1/94	8,765.00	8,765.00
b.	Non-LUST Sites		
1.	1 or 2 Contaminants of concern	8,570.00	8,570.00
2.	> 2 Contaminants of concern	17,140.00	17,140.00
Ink Formulation and Printing			
a.	Commercial Print Shops	2,571.00	2,571.00
b.	Newspapers	4,286.00	4,286.00
c.	Box Plants	6,856.00	6,856.00
d.	Ink Formulation	8,571.00	8,571.00
Inorganic Chemicals Manufacturing			
a.	Lime Products	8,354.00	8,354.00
b.	Fertilizer	10,058.00	10,058.00
c.	Peroxide	13,368.00	13,368.00
d.	Alkaline Earth Salts	16,713.00	16,713.00
e.	Metal Salts	23,393.00	23,393.00
f.	Acid Manufacturing	33,416.00	33,416.00
g.	Chlor-alkali	66,846.00	66,846.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2012)) 2014 ANNUAL PERMIT FEE	FY ((2013)) 2015 ANNUAL PERMIT FEE & BEYOND
Iron and Steel		
a. Foundries	16,713.00	16,713.00
b. Mills	33,453.00	33,453.00
Metal Finishing		
a. < 1,000 gpd	2,004.00	2,004.00
b. 1,000 - < 10,000 gpd	3,341.00	3,341.00
c. 10,000 - < 50,000 gpd	8,353.00	8,353.00
d. 50,000 - < 100,000 gpd	16,712.00	16,712.00
e. 100,000 - < 500,000 gpd	33,420.00	33,420.00
f. 500,000 gpd and greater	50,133.00	50,133.00
Noncontact Cooling Water With Additives - Individual Permit Coverage		
a. < 1,000 gpd	1,046.00	1,046.00
b. 1,000 - < 10,000 gpd	1,459.00	1,459.00
c. 10,000 - < 50,000 gpd	3,136.00	3,136.00
d. 50,000 - < 100,000 gpd	7,314.00	7,314.00
e. 100,000 - < 500,000 gpd	12,531.00	12,531.00
f. 500,000 - < 1,000,000 gpd	17,758.00	17,758.00
g. 1,000,000 - < 2,500,000 gpd	22,982.00	22,982.00
h. 2,500,000 - < 5,000,000 gpd	28,082.00	28,082.00
i. 5,000,000 gpd and greater	33,422.00	33,422.00
Noncontact Cooling Water With Additives - General Permit Coverage		
a. < 1,000 gpd	733.00	733.00
b. 1,000 - < 10,000 gpd	1,461.00	1,461.00
c. 10,000 - < 50,000 gpd	2,195.00	2,195.00
d. 50,000 - < 100,000 gpd	5,120.00	5,120.00
e. 100,000 - < 500,000 gpd	8,773.00	8,773.00
f. 500,000 - < 1,000,000 gpd	12,432.00	12,432.00
g. 1,000,000 - < 2,500,000 gpd	16,086.00	16,086.00
h. 2,500,000 - < 5,000,000 gpd	19,739.00	19,739.00
i. 5,000,000 gpd and greater	23,394.00	23,394.00
Noncontact Cooling Water Without Additives - Individual Permit Coverage		
a. < 1,000 gpd	838.00	838.00
b. 1,000 - < 10,000 gpd	1,671.00	1,671.00
c. 10,000 - < 50,000 gpd	2,509.00	2,509.00
d. 50,000 - < 100,000 gpd	5,851.00	5,851.00
e. 100,000 - < 500,000 gpd	10,030.00	10,030.00
f. 500,000 - < 1,000,000 gpd	14,203.00	14,203.00
g. 1,000,000 - < 2,500,000 gpd	18,310.00	18,310.00
h. 2,500,000 - < 5,000,000 gpd	22,559.00	22,559.00
i. 5,000,000 gpd and greater	26,739.00	26,739.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2012)) 2014 ANNUAL PERMIT FEE	FY ((2013)) 2015 ANNUAL PERMIT FEE & BEYOND
Noncontact Cooling Water Without Additives - General Permit Coverage		
a. < 1,000 gpd	586.00	586.00
b. 1,000 - < 10,000 gpd	1,172.00	1,172.00
c. 10,000 - < 50,000 gpd	1,757.00	1,757.00
d. 50,000 - < 100,000 gpd	4,095.00	4,095.00
e. 100,000 - < 500,000 gpd	7,019.00	7,019.00
f. 500,000 - < 1,000,000 gpd	9,944.00	9,944.00
g. 1,000,000 - < 2,500,000 gpd	12,868.00	12,868.00
h. 2,500,000 - < 5,000,000 gpd	15,793.00	15,793.00
i. 5,000,000 gpd and greater	18,715.00	18,715.00
Nonferrous Metals Forming	16,713.00	16,713.00
Ore Mining		
a. Ore Mining	3,342.00	3,342.00
b. Ore mining with physical concentration processes	6,682.00	6,682.00
c. Ore mining with physical and chemical concentration processes	26,739.00	26,739.00
Organic Chemicals Manufacturing		
a. Fertilizer	16,713.00	16,713.00
b. Aliphatic	33,422.00	33,422.00
c. Aromatic	50,136.00	50,136.00
Petroleum Refining		
a. < 10,000 bbls/d	33,422.00	33,422.00
b. 10,000 - < 50,000 bbls/d	66,266.00	66,266.00
c. 50,000 bbls/d and greater	133,699.00	133,699.00
Photofinishers		
a. < 1,000 gpd	1,337.00	1,337.00
b. 1,000 gpd and greater	3,342.00	3,342.00
Power and/or Steam Plants		
a. Steam Generation - Nonelectric	6,680.00	6,680.00
b. Hydroelectric	6,680.00	6,680.00
c. Nonfossil Fuel	10,028.00	10,028.00
d. Fossil Fuel	26,739.00	26,739.00
Pulp, Paper and Paper Board		
a. Fiber Recyclers	16,711.00	16,711.00
b. Paper Mills	33,422.00	33,422.00
c. Groundwood Pulp Mills		
1. < 300 tons per day	50,136.00	50,136.00
2. > 300 tons per day	100,270.00	100,270.00
d. Chemical Pulp Mills w/o Chlorine Bleaching	133,692.00	133,692.00
e. Chemical Pulp Mills w/Chlorine Bleaching	150,400.00	150,400.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2012)) 2014 ANNUAL PERMIT FEE	FY ((2013)) 2015 ANNUAL PERMIT FEE & BEYOND
Radioactive Effluents and Discharges (RED)		
a. < 3 waste streams	32,332.00	32,332.00
b. 3 - < 8 waste streams	56,147.00	56,147.00
c. 8 waste streams and greater	92,478.00	92,478.00
RCRA Corrective Action Sites	23,490.00	23,490.00
Seafood Processing		
a. < 1,000 gpd	1,671.00	1,671.00
b. 1,000 - < 10,000 gpd	4,259.00	4,259.00
c. 10,000 - < 50,000 gpd	7,604.00	7,604.00
d. 50,000 - < 100,000 gpd	11,948.00	11,948.00
e. 100,000 gpd and greater	16,713.00	16,713.00
Shipyards		
a. Per crane, travel lift, small boat lift	3,342.00	3,342.00
b. Per drydock under 250 ft in length	3,342.00	3,342.00
c. Per graving dock	3,342.00	3,342.00
d. Per marine way	5,012.00	5,012.00
e. Per scrolift	5,012.00	5,012.00
f. Per drydock over 250 ft in length	6,682.00	6,682.00
g. In-water vessel maintenance	6,682.00	6,682.00
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstorm water)		
a. Nonputrescible	6,682.00	6,682.00
b. < 50 acres	13,367.00	13,367.00
c. 50 - < 100 acres	26,739.00	26,739.00
d. 100 - < 250 acres	33,422.00	33,422.00
e. 250 acres and greater	50,136.00	50,136.00
Textile Mills	66,846.00	66,846.00
Timber Products		
a. Log Storage	3,342.00	3,342.00
b. Veneer	6,682.00	6,682.00
c. Sawmills	13,368.00	13,368.00
d. Hardwood, Plywood	23,393.00	23,393.00
e. Wood Preserving	32,094.00	32,094.00
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	110.00	110.00
b. 1,000 - < 5,000 gpd	224.00	224.00
c. 5,000 - < 10,000 gpd	440.00	440.00
d. 10,000 - < 20,000 gpd	887.00	887.00
e. 20,000 and greater	1,464.00	1,464.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2012)) 2014 ANNUAL PERMIT FEE	FY ((2013)) 2015 ANNUAL PERMIT FEE & BEYOND
Vehicle Maintenance and Freight Transfer		
a. < 0.5 acre	3,342.00	3,342.00
b. 0.5 - < 1.0 acre	6,682.00	6,682.00
c. 1.0 acre and greater	10,028.00	10,028.00
Water Plants - Individual Permit Coverage	4,361.00	4,562.00
Water Plants - General Permit Coverage	3,052.00	3,193.00
Wineries		
a. < 500 gpd	341.00	341.00
b. 500 - < 750 gpd	684.00	684.00
c. 750 - < 1,000 gpd	1,367.00	1,367.00
d. 1,000 - < 2,500 gpd	2,734.00	2,734.00
e. 2,500 - < 5,000 gpd	4,362.00	4,362.00
f. 5,000 gpd and greater	5,987.00	5,987.00

(a) Facilities other than those in the aggregate production, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Crop preparation and aggregate production permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. When required, the department will send the information form to the permit holder. The permit holder shall complete and return the information form to the department by the required due date. Failure to provide this information will result in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized ~~((general))~~ partner;

(C) In the case of a general partnership, by an authorized general partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for crop preparers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the crop preparing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste clean up sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70.105D RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70.105D RCW ceases.

(g) Any permit holder, with the exception of nonoperating aggregate operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode must be verified by the appropriate ecology staff. Once operations resume, the permit fee will be returned to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period will be assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit will be assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

Residential Equivalents (RE)	FY ((2012)) 2014	FY ((2013)) 2015
	Annual Permit Fee	Annual Permit Fee & Beyond
< 250,000	\$((2-07)) <u>2.16</u>	\$2.16
> 250,000	((1-44)) <u>1.58</u>	((1-51)) <u>1.65</u>

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

- (i) Holds more than one permit for domestic wastewater facilities; and
- (ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

- (i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and
- (ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned and government-owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned or government-owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned or government-owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

Permitted Flows	FY ((2012)) 2014	FY ((2013)) 2015
	Annual Permit Fee	Annual Permit Fee & Beyond
.1 MGD and Greater	\$((9-592-00)) <u>10,492.00</u>	\$((10-035-00)) <u>10,978.00</u>
.05 MGD to < .1 MGD	((3-838-00)) <u>4,198.00</u>	((4-015-00)) <u>4,392.00</u>
.0008 MGD to < .05 MGD	((1-919-00)) <u>2,099.00</u>	((2-008-00)) <u>2,196.00</u>
< .0008 MGD	((578-00)) <u>633.00</u>	((605-00)) <u>662.00</u>

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from

the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor; or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(4) STORM WATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))

	FY ((2012)) 2014 Annual Permit Fee	FY ((2013)) 2015 Annual Permit Fee & Beyond
a. Individual Construction or Industrial Storm Water Permits		
1. < 50 acres	\$(3,838.00) <u>4,198.00</u>	\$(4,015.00) <u>4,392.00</u>
2. 50 -< 100 acres	\$(7,670.00) <u>8,389.00</u>	\$(8,024.00) <u>8,777.00</u>
3. 100 -< 500 acres	\$(11,514.00) <u>12,594.00</u>	\$(12,046.00) <u>13,177.00</u>
4. 500 acres and greater	\$(15,349.00) <u>16,789.00</u>	\$(16,058.00) <u>17,566.00</u>
b. Facilities Covered Under the Industrial Storm Water General Permit		
1. Municipalities and state agencies	\$(1,256.00) <u>1,374.00</u>	\$(1,314.00) <u>1,438.00</u>
2. New permit holders without historical gross revenue information	\$(660.00) <u>721.00</u>	\$(690.00) <u>754.00</u>

	FY ((2012)) 2014	FY ((2013)) 2015
	Annual Permit	Annual Permit
	Fee	Fee & Beyond
3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		
Gross Revenue		
Less than \$100,000	((122.00))	((128.00))
	<u>134.00</u>	<u>140.00</u>
\$100,000 -< \$1,000,000	((529.00))	((553.00))
	<u>578.00</u>	<u>605.00</u>
\$1,000,000 -< \$2,500,000	((634.00))	((663.00))
	<u>693.00</u>	<u>725.00</u>
\$2,500,000 -< \$5,000,000	((1,058.00))	((1,107.00))
	<u>1,157.00</u>	<u>1,211.00</u>
\$5,000,000 -< \$10,000,000	((1,587.00))	((1,660.00))
	<u>1,736.00</u>	<u>1,816.00</u>
\$10,000,000 and greater	((1,917.00))	((2,006.00))
	<u>2,097.00</u>	<u>2,194.00</u>

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

c. Construction Activities Covered Under the Construction Storm Water General Permit(s)

1. Less than 5 acres disturbed area	\$(496.00)	\$(519.00)
	<u>543.00</u>	<u>568.00</u>
2. 5 -< 7 acres of disturbed area	((808.00))	((845.00))
	<u>883.00</u>	<u>924.00</u>
3. 7 -< 10 acres of disturbed area	((1,090.00))	((1,140.00))
	<u>1,192.00</u>	<u>1,247.00</u>
4. 10 -< 20 acres of disturbed area	((1,487.00))	((1,556.00))
	<u>1,627.00</u>	<u>1,702.00</u>
5. 20 acres and greater of disturbed area	((1,850.00))	((1,935.00))
	<u>2,023.00</u>	<u>2,117.00</u>

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal storm water permit annual fee for the entities listed below will be:

Name of Entity	FY ((2012)) 2014	FY ((2013)) 2015	Name of Entity	FY ((2012)) 2014	FY ((2013)) 2015
	Annual Permit	Annual Permit		Annual Permit	Annual Permit
	Fee	Fee & Beyond		Fee	Fee & Beyond
King County	\$(43,710.00)	\$(45,729.00)	Pierce County	((43,710.00))	((45,729.00))
	<u>47,810.00</u>	<u>50,024.00</u>		<u>47,810.00</u>	<u>50,024.00</u>
Snohomish County	((43,710.00))	((45,729.00))	Tacoma, City of	((43,710.00))	((45,729.00))
	<u>47,810.00</u>	<u>50,024.00</u>		<u>47,810.00</u>	<u>50,024.00</u>
			Seattle, City of	((43,710.00))	((45,729.00))
				<u>47,810.00</u>	<u>50,024.00</u>
			Washington Department of Transportation	((43,710.00))	((45,729.00))
				<u>47,810.00</u>	<u>50,024.00</u>

Name of Entity	FY ((2012)) 2014 Annual Permit Fee	FY ((2013)) 2015 Annual Permit Fee & Beyond
Clark County	((43,710.00)) 47,810.00	((45,729.00)) 50,024.00

(b) Municipal storm water general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, will be determined in the following manner: For fiscal year ((2012)) 2014, ecology will charge \$((-1.27)) 1.39 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to \$((-62)) .68 per housing unit inside the geographic area covered by the permit. For fiscal year ((2013)) 2015, ecology will charge \$((-1.33)) 1.45 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to \$((-65)) .71 per housing unit inside the geographic area covered by the permit. Fees will not exceed \$((43,710.00)) 47,810.00 for fiscal year ((2012)) 2014 and \$((45,729.00)) 50,024.00 for fiscal year ((2013)) 2015. The minimum annual fee will not be lower than \$((-1,818.00)) 1,988.00 for fiscal year ((2012)) 2014 and \$((-1,902.00)) 2,080.00 for fiscal year ((2013)) 2015 unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling \$((-62)) .68 per housing unit for fiscal year ((2012)) 2014. The fee amount for FY ((2013)) 2015 will be \$((-65)) .71 per housing unit.

(c) Other entities required to have permit coverage under a municipal storm water general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:

Annual Operating Budget	FY ((2012)) 2014 Annual Permit Fee	FY ((2013)) 2015 Annual Permit Fee & Beyond
Less than \$100,000	\$((-127.00)) 139.00	\$((-133.00)) 145.00
\$100,000 -< \$1,000,000	(((\$512.00)) 560.00	(((\$536.00)) 586.00
\$1,000,000 -< \$5,000,000	(((\$1,279.00)) 1,399.00	(((\$1,338.00)) 1,464.00
\$5,000,000 -< \$10,000,000	(((\$1,918.00)) 2,098.00	(((\$2,007.00)) 2,195.00
\$10,000,000 and greater	(((\$3,197.00)) 3,497.00	(((\$3,345.00)) 3,659.00

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:

- (i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.
- (ii) For ports, the annual operating budget for the port district.

(ii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.

(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.

(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.

(d) Municipal storm water permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or \$15,000.

(iii) For entities that would otherwise be covered under a municipal storm water general permit as determined in (c) of this subsection, the fiscal year ((2012)) 2014 annual fee for a permit written for a specific entity shall be \$((-9,092.00)) 9,945.00. For FY ((2013)) 2015, the annual fee will be \$((-9,512.00)) 10,405.00.

(e) Ecology will assess a single permit fee for entities which apply only as co-permittees or co-applicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the co-permittees had applied separately.

AMENDATORY SECTION (Amending WSR 09-20-020, filed 9/28/09, effective 10/29/09)

WAC 173-224-050 Permit fee computation and payments. (1) The department shall charge permit fees based on the permit fee schedule contained in WAC 173-224-040. The department may charge fees at the beginning of the fiscal year to which they apply. The department shall notify permit holders of fee charges by mailing billing statements. Permit fees must be received by the department within forty-five days after the department mails a billing statement. The department may elect to bill permit holders a prorated portion of the annual fee on a monthly, quarterly, or other periodic basis.

(2) Permit fee computation for individual permits. Computation of permit fees shall begin on the first day of each fiscal year. In the case of facilities or activities not previously covered by permits, fee computation begins on the issuance date of the permit. In the case of applicants for state waste discharge permits who are deemed to have a temporary permit under RCW 90.48.200, computation shall begin on the sixty-first day after the department accepts a completed application. In the case of NPDES permit holders who submit a new, updated permit application containing information that could change their assigned permit fee, computation and permit fee category reassignment begins upon acceptance of the application by the department. Any facility that obtains

permit coverage but fails to operate will still be obligated to pay the annual permit fee assessment until the permit has been terminated by the department. Permits terminated during the fiscal year will pay the annual fee assessment regardless of the permit termination date.

(3) Permit fees for sand and gravel (aggregate) general permit holders will be assessed as in subsection ~~((3))~~ (2) of this section and:

(a) Nonoperating ~~(aggregate)~~ sites. A facility conducting mining, screening, washing and/or crushing activities excluding portable rock crushing operations is considered nonoperating for fee purposes if they are conducting these activities for less than ninety cumulative days during a calendar year. A facility producing no asphalt and/or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete and/or asphalt production will be assessed a prorated fee for the actual time inactive. For the actual time a concrete and/or asphalt facility is active excluding asphalt portable batch plants and concrete portable batch plants, fees will be based on total production of concrete and/or asphalt.

(c) Fees for continuously active sites that produce concrete and/or asphalt excluding asphalt portable batch plants and concrete portable batch plants, will be based on the average of the three previous calendar years production totals. Existing facilities must provide the department with the production totals for concrete and/or asphalt produced during the previous three calendar years or for the number of full calendar years of operation if less than three. New facilities with no historical asphalt and/or concrete production data will have their first year fee based on the production levels reported on the application for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Storm Water, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(d) Asphalt portable batch plants, concrete portable batch plants and portable rock crushing operations will be assessed fees as in subsection ~~((3))~~ (2) of this section. Each permitted operation must commit to being shut down for a minimum of twelve calendar months before the status can be changed to nonoperating.

(4) Fees for crop preparation general permit holders will be assessed as in subsection ~~((3))~~ (2) of this section and will be computed on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 (2)(d). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee will be deter-

mined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(5) Facilities with construction and industrial storm water general permit coverage will have their annual permit fees begin on the permit issuance date. Permit fee accrual will continue until the permit has been terminated by the department regardless if the activity covered under the permit has already ceased.

(6) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction storm water general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.

(7) Computation of fees shall end on June 30th, the last day of the state's fiscal year regardless of the permit termination date.

(8) The applicable permit fee shall be paid by check or money order payable to the "Department of Ecology" and mailed to the Wastewater Discharge Permit Fee Program, P. O. Box 47611, Olympia, Washington 98504-7611.

(9) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

(10) Delinquent accounts. Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts will be processed in the following manner:

(a) Municipal and government entities shall be notified by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may receive a permit revocation letter for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders shall be notified by the department by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days will be turned over for collection. In addition, a surcharge totaling twenty percent of the delinquent amount owed will also be added. The surcharge is to recover the costs for collection. If the collection agency fails to recover the delinquent fees after twelve months, the permit holder may receive a permit revocation letter for nonpayment of fees.

AMENDATORY SECTION (Amending WSR 11-20-035, filed 9/27/11, effective 10/28/11)

WAC 173-224-090 Permit fee reductions. With the exception of facilities covered under the industrial storm water general permit who are not eligible to apply for a fee reduction, any business required to pay a fee under an industrial or construction fee category may receive a reduction of its permit fee.

Small business fee reduction.

(1) To qualify for the fee reduction, a business must:

(a) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

(b) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

(c) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge or storm water discharge permit; and

(d) Have an original annual fee assessment totaling five hundred dollars or greater.

(2) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions of subsection (1) of this section have been met. The application shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

(3) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(4) The permit fee for small businesses determined to be eligible under subsection (1) of this section shall be reduced to fifty percent of the assessed annual permit fee.

Extreme hardship fee reduction. Any industrial or construction small business with annual gross revenue totaling one hundred thousand dollars or less of the goods and services produced using the processes regulated by the waste discharge or storm water discharge permit may apply for an extreme hardship fee reduction. The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below (~~(\$122.00 for fiscal year 2012 and \$128.00 for fiscal year 2013))~~ \$128.00.

WSR 13-17-104

PROPOSED RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed August 21, 2013, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-092.

Title of Rule and Other Identifying Information: WAC 182-500-0105 Medical assistance definitions—T, 182-503-0100 Washington apple health—Rights and responsibilities, 182-503-0110 Washington apple health—Limited English proficient (LEP), 182-503-0120 Washington apple health—Equal access services, 182-503-0510 Washington apple health—Program summary, 182-504-0130 Washington apple health—Continues coverage pending an appeal, 182-507-0110 Washington apple health—Alien medical programs, 182-514-0230 Washington apple health—MAGI-based long-term care program, 182-514-0235 Definitions, 182-514-0240 Washington apple health—General eligibility requirements

for MAGI-based long-term care program, 182-514-0245 Washington apple health—Resource eligibility for MAGI-based long-term care program, 182-514-0250 Washington apple health—MAGI-based long-term care program for adults age twenty-one or older, 182-514-0255 Washington apple health—MAGI-based long-term care program for young adults nineteen and twenty years of age, 182-514-0260 Washington apple health—MAGI-based long-term care coverage for children eighteen years of age or younger, 182-514-0265 Washington apple health—How the agency or its designee determines how much of an institutionalized person's income must be paid towards the cost of care for the MAGI-based long-term care program, and 182-514-0270 When an involuntary commitment to eastern or western state hospital is covered by medicaid.

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 September 24, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 25, 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 September 24, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by September 16, 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 is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates the HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health (WAH)).

Reasons Supporting Proposal: See Purpose statement.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Jessie Minier, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1501.

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

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

August 21, 2013
Kevin M. Sullivan
Rules Coordinator

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

WAC 182-500-0105 Medical assistance definitions—

T. "Tax filing terms":

(1) **"Tax filer"** means a person who is required to file a tax return.

(2) **"Tax dependent"** means a person for whom another person claims a deduction for a personal exemption under Section 151 of the Internal Revenue Code of 1986 for a taxable year. A tax dependent may be either a qualified child or a qualified relative as defined below:

(a) **"Qualified child"** means a child who meets the criteria to be claimed as a tax dependent based on one of the following relationships to the tax filer: Natural, adoptive, step, or foster child; natural, adoptive, step or half-sibling; or a descendant of any of the above; and meets the following criteria:

(i) The child is:

(A) Under the age of nineteen;

(B) Under the age of twenty-four and a full-time student;

or

(C) Any age and permanently or totally disabled.

(ii) The child lived in the tax filer's household for more than one-half of the year;

(iii) The child provided for less than one-half of his/her own support for the year; and

(iv) The child is not filing a joint tax return for the year unless the return is filed only as a claim for a refund of taxes.

(b) **"Qualified relative"** means a person who:

(i) Cannot be claimed as a qualifying child or the qualifying child of another tax filer;

(ii) Has lived in the tax filer's household for the full year or is related to the tax filer in one of the ways listed below and the relationship has not been ended by death or divorce:

(A) The tax filer's child, stepchild, foster child, or a descendant of any of them;

(B) A sibling, half-sibling or step-sibling;

(C) A parent, grandparent, or other direct ancestor, but not a foster parent;

(D) A niece, nephew, aunt, or uncle;

(E) In-law relationships (son, daughter, father, mother, brother or sister-in-law).

(iii) Has gross income below an annual threshold set by the Internal Revenue Service (IRS) (three thousand nine hundred dollars for tax year 2013 with some exceptions). See IRS publication 501 for more information; and

(iv) Relies on the tax filer to pay over one-half of their total support for the year.

(3) **"Nonfiler"** means a person who is not required to file a tax return and also includes those who are not required

to file but choose to file for another purpose, such as to claim a reimbursement of taxes paid.

"Third party" means an entity other than the agency or the agency's designee that is or may be liable to pay all or part of the cost of health care for a (~~(medical assistance))~~ Washington apple health client.

"Third party liability (TPL)" means the legal responsibility of an identified third party or parties to pay all or part of the cost of health care for a (~~(medical assistance))~~ Washington apple health (WAH) client. A (~~(medical assistance))~~ WAH client's obligation to help establish TPL is described in WAC (~~(388-505-0540))~~ 182-503-0540.

"Title XIX" is the portion of the federal Social Security Act, 42 U.S.C. 1396, that authorizes funding to states for (~~(medical assistance))~~ health care programs. Title XIX is also called medicaid.

"Title XXI" is the portion of the federal Social Security Act, 42 U.S.C. 1397 et seq, that authorizes funding to states for the children's health insurance program(~~(Title XXI is also called))~~ (CHIP).

"Transfer of assets" means changing ownership or title of an asset such as income, real property, or personal property by one of the following:

(1) An intentional act that changes ownership or title; or

(2) A failure to act that results in a change of ownership or title.

NEW SECTION

WAC 182-503-0100 Washington apple health—Rights and responsibilities. For the purposes of this chapter, "we" refers to the agency or its designee and "you."

(1) If you are applying for or receiving health care coverage, you have the right to:

(a) Have your rights and responsibilities explained to you and given in writing;

(b) Be treated politely and fairly no matter what your race, color, political beliefs, national origin, religion, age, gender (gender identity and sex stereotyping), sexual orientation, disability, honorably discharged veteran or military status, or birthplace;

(c) Request health care coverage using any method listed under WAC 182-503-0010 (if you ask us for a receipt or confirmation, we will provide one to you);

(d) Get help completing your application if you ask for it;

(e) Have an application processed promptly and no later than the timelines described in WAC 182-503-0060;

(f) Have at least ten calendar days to give the agency or its designee information needed to determine eligibility and be given more time if requested;

(g) Have personal information kept confidential; we may share information with other state and federal agencies for purposes of verification and enrollment;

(h) Receive written notice, in most cases, at least ten calendar days before the agency or its designee denies, terminates, or changes coverage;

(i) Ask for an appeal if you disagree with a decision we make. You can also ask a supervisor or administrator to

review our decision or action without affecting your right to a fair hearing;

(j) Request and receive interpreter or translator services at no cost and without delay;

(k) Request voter registration assistance;

(l) Refuse to speak to an investigator if we audit your case. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for health care coverage; and

(m) Receive equal access services under WAC 182-503-0120 if you are eligible, in order to comply with the requirements of subsection (2) of this section.

(2) You are responsible to:

(a) Report changes in your household or family circumstances as required under WAC 182-504-0105 and 182-504-0110;

(b) Give us any information or proof needed to determine eligibility. If you have trouble getting proof, we help you get the proof or contact other persons or agencies for it;

(c) Assign the right to medical support as described in WAC 182-505-0540;

(d) Complete renewals when asked;

(e) Apply for and make a reasonable effort to get potential income from other sources when available;

(f) Give medical providers information needed to bill us for health care services; and

(g) Cooperate with quality assurance or post enrollment review staff when asked.

NEW SECTION

WAC 182-503-0110 Washington apple health—Limited-English proficient (LEP) services. (1) The agency or its designee provides limited-English proficient (LEP) services free of charge to persons with limited ability to read, write, and/or speak English.

(2) The agency provides LEP services in the person's primary languages.

(a) The primary languages are the languages the person has indicated to the agency or its designee that they wish to use when communicating with the agency. A person may designate at least one primary language for oral communications and at least one primary language for written communications, and may designate a different primary language for oral and written communications.

(b) The agency or its designee notes the person's primary languages in a record available to the agency, its designee, and health benefit exchange employees.

(3) The agency or its designee can provide LEP services through bilingual workers and/or contracted interpreters and translators.

(4) The agency or its designee provides notice of the availability of LEP services. LEP services include:

(a) Interpreter (oral) services in person, over the telephone, or through other simultaneous audio or visual transmission (if available); and

(b) Translation of agency forms, letters, and other text-based materials, whether printed in hard-copy or stored and presented by computer. These include, but are not limited to:

(i) Agency pamphlets, brochures, and other informational material that describe agency services and health care rights and responsibilities;

(ii) Agency applications and other forms a person needs to complete and/or sign; and

(iii) Notices of agency actions affecting a person's eligibility for health care coverage.

(c) Direct provision of services by bilingual employees.

(5) The agency or its designee provides interpreter services and translated documents in a prompt manner that allows the timely processing of a person's eligibility for health care coverage within time frames defined in WAC 182-503-0060, 182-503-0035, and 182-504-0125.

NEW SECTION

WAC 182-503-0120 Washington apple health—Equal access services. (1) The agency or its designee provides services to help a person apply for, maintain, and understand the health care coverage options available and eligibility decisions made by the agency or its designee when a person has a mental, neurological, physical or sensory impairment, or limitation that prevents a person from receiving health care coverage in the same way as an unimpaired or unlimited person. These services are called equal access (EA) services.

(2) The agency or its designee provides EA services on an ongoing basis to ensure that the person is able to maintain health care coverage and access to services provided by the agency. Accommodations include, but are not limited to:

(a) Arranging for or providing help to:

(i) Apply for or renew coverage;

(ii) Complete and submit forms;

(iii) Obtain information to determine or continue eligibility;

(iv) Request continued coverage; and

(v) Request a hearing.

(b) Allowing additional time, when needed, to provide information before health care coverage is reduced or stopped;

(c) Explaining the decision to stop or deny health care coverage; and

(d) Providing copies of notices and letters to the person's authorized representative.

(3) The agency or its designee informs a person of their right to EA services listed in subsection (2) of this section:

(a) On written notices;

(b) In the Rights and Responsibilities form; and

(c) During contact with the agency or its designee.

(4) The agency or its designee provides the services listed in subsection (2) of this section to persons who request EA services, persons who are receiving services through the aging and long-term support administration, or persons whom the agency determines would benefit from EA services. The agency or its designee identifies a person as benefiting from EA services if the person:

(a) Has or claims to have a mental impairment;

(b) Has a developmental disability;

(c) Is disabled by alcohol or drug addiction;

(d) Is unable to read or write in any language; or

(e) Is a minor not residing with his or her parents.

(5) For every person receiving EA services, the agency or its designee develops and documents an EA plan appropriate to the person's needs. The plan may be updated or changed at any time based on the person's request or a change in the person's needs.

(6) Even if the agency or its designee determines a person may benefit from EA services, the person may refuse the services offered.

(7) The agency provides a grace period to continue a person's coverage when:

(a) The agency stops coverage because it is unable to determine if a person continues to qualify; and

(b) The person provides proof he or she still qualifies for coverage within twenty calendar days from when the coverage stopped. We restore the coverage retroactive to the first of the month so there is no break in coverage.

(8) If a person believes that the agency or its designee has discriminated against them on the basis of a disability, the person may file a complaint with the United States Department of Health and Human Services (HHS) by:

(a) Writing to: HHS, Director, Office for Civil Rights, 200 Independence Ave. S.W., Room 509F HHH Bldg., Washington, D.C., 20201; or

(b) Calling HHS at 202-619-0403 (voice) or 202-619-3257 (TDD).

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-503-0510 ((How a client is determined "related to" a categorical program.)) Washington apple health—Program summary. ~~(((1) A person is related to the supplemental security income (SSI) program if they are:~~

~~(a) Aged, blind, or disabled as defined in chapter 388-475 WAC; or~~

~~(b) Considered as eligible for SSI under chapter 388-475 WAC; or~~

~~(c) Children meeting the requirements of WAC 388-505-0210(5).~~

~~(2) A person or family is considered to be related to the temporary assistance for needy families (TANF) program if they:~~

~~(a) Meet the program requirements for the TANF cash assistance programs or the requirements of WAC 388-505-0220; or~~

~~(b) Would meet such requirements except that the assistance unit's countable income exceeds the TANF program standards in WAC 388-478-0065.~~

~~(3) Persons related to SSI or to TANF are eligible for categorically needy (CN) or medically needy (MN) medical coverage if they meet the other eligibility criteria for these medical programs. See chapters 388-475, 388-505 and 388-519 WAC for these eligibility criteria.~~

~~(4) Persons related to SSI or to TANF and who receive the related CN medical coverage have redetermination rights as described in WAC 388-503-0505(6-)).~~ (1) The agency categorizes Washington apple health (WAH) programs into three groups based on the income methodology used to determine eligibility:

(a) Those that use a modified adjusted gross income (MAGI)-based methodology described in WAC 182-509-0300, called MAGI-based WAH programs;

(b) Those that use an income methodology other than MAGI, called non-MAGI-based WAH programs, which include:

(i) Supplemental security income (SSI)-related WAH programs;

(ii) Temporary assistance for needy families (TANF)-related WAH programs; and

(iii) Other WAH programs not based on MAGI, SSI, or TANF methodologies.

(c) Those that provide coverage based on a specific status or entitlement in federal rule and not on countable income, called deemed eligible WAH programs.

(2) MAGI-based WAH programs include the following:

(a) WAH parent and caretaker relative program described in WAC 182-505-0240;

(b) MAGI-based WAH adult medical program described in WAC 182-505-0250, for which the scope of coverage is called the alternative benefits plan (ABP) described in WAC 182-500-0010;

(c) WAH for pregnant women program described in WAC 182-505-0115;

(d) WAH for kids program described in WAC 182-505-0210 (3)(a);

(e) Premium-based WAH for kids described in WAC 182-505-0215;

(f) WAH long-term care for children and adults described in chapter 182-514 WAC; and

(g) WAH alien emergency medical program described in WAC 182-507-0110 through 182-507-0125 when the person is eligible based on criteria for a MAGI-based WAH program.

(3) Non-MAGI-based WAH programs include the following:

(a) SSI-related programs which use the income methodologies of the SSI program (except where the agency has adopted more liberal rules than SSI) described in chapter 182-512 WAC to determine eligibility:

(i) WAH for workers with disabilities (HWD) described in chapter 182-511 WAC;

(ii) WAH SSI-related programs described in chapters 182-512 and 182-519 WAC;

(iii) WAH long-term care and hospice programs described in chapters 182-513 and 182-515 WAC;

(iv) WAH medicare savings programs described in chapter 182-517 WAC; and

(v) WAH alien emergency medical (AEM) programs described in WAC 182-507-0110 and 182-507-0125 when the person meets the age, blindness or disability criteria specified in WAC 182-512-0050.

(b) TANF-related programs which use the income methodologies based on the TANF cash program described in WAC 388-450-0170 to determine eligibility, with variations as specified in WAC 182-509-0001(5) and program specific rules:

(i) WAH refugee medical assistance (RMA) program described in WAC 182-507-0130; and

(ii) WAH medically needy (MN) coverage for pregnant women and children who do not meet SSI-related criteria.

(c) Other programs:

(i) WAH breast and cervical cancer program described in WAC 182-505-0120;

(ii) WAH TAKE CHARGE program described in WAC 182-532-0720; and

(iii) WAH medical care services described in WAC 182-508-0005.

(4) Deemed eligible WAH programs include:

(a) WAH SSI medical program described in chapter 182-510 WAC, or a person who meets the medicaid eligibility criteria in 1619b of the Social Security Act;

(b) WAH newborn medical program described in WAC 182-505-0210(2);

(c) WAH foster care program described in WAC 182-505-0211;

(d) WAH medical extension program described in WAC 182-523-0100; and

(e) WAH family planning extension described in WAC 182-505-0115(5).

(5) A person is eligible for categorically needy (CN) health care coverage when the household's countable income is at or below the categorically needy income level (CNIL) for the specific program.

(6) If income is above the CNIL, a person is eligible for the MN program if the person is:

(a) A child;

(b) A pregnant woman; or

(c) SSI-related (aged sixty-five, blind or disabled).

(7) MN health care coverage is not available to parents, caretaker relatives, or adults unless they are eligible under subsection (6) of this section.

(8) A person who is eligible for the WAH MAGI-based adult program listed in subsection (2)(b) of this section is eligible for ABP health care coverage as defined in WAC 182-500-0010. Such a person may apply for more comprehensive coverage through another WAH program at any time.

(9) For the other specific program requirements a person must meet to qualify for WAH, see chapters 182-503 through 182-527 WAC.

NEW SECTION

WAC 182-504-0130 Washington apple health—Continued coverage pending an appeal. (1) A person who does not agree with a Washington apple health (WAH) decision made by the agency or its designee has the right to appeal under RCW 74.09.741. The hearing rules are found in chapter 182-526 WAC.

(2) If a person appeals a WAH decision within the time limits described in WAC 182-518-0005, WAH coverage will continue or be reinstated until the appeals process ends, unless otherwise specified in this section. This is called continued coverage.

(3) If the tenth day falls on a weekend or holiday, a person has until the next business day to appeal and still be able to receive continued coverage.

(4) Persons receive continued coverage through the end of the month an administrative hearing decision is sent to them unless:

(a) An administrative law judge or the agency's presiding officer serves an order ending continued coverage; or

(b) The person:

(i) Tells the agency or its designee in writing that he or she does not want continued coverage;

(ii) Withdraws the appeal in writing or at an administrative proceeding; or

(iii) Does not follow through with the appeals process.

(5) A person is not eligible for continued coverage when a change in WAH is the result of a mass change. A mass change is when rules change that impact coverage for a class of applicants and recipients or due to a legislative or statutory change.

(6) A person receiving WAH medically needy is not eligible for continued coverage beyond the end of the original certification period described in WAC 182-504-0020.

AMENDATORY SECTION (Amending WSR 12-24-038, filed 11/29/12, effective 12/30/12)

WAC 182-507-0110 Washington apple health—Alien medical programs. (1) To qualify for an alien medical program (AMP) a person must:

(a) Be ineligible for ~~((medicaid or other medicaid agency medical))~~ federally funded Washington apple health (WAH) programs due to the citizenship/alien status requirements described in WAC ~~((388-424-0010))~~ 182-503-0535;

(b) Meet the requirements described in WAC 182-507-0115, 182-507-0120, or 182-507-0125; and

(c) Meet all categorical and financial eligibility criteria for one of the following programs, except for the Social Security number or citizenship/alien status requirements:

(i) ~~((WAC 388-475-0050, for))~~ An SSI-related ((per-son)) medical program described in chapters 182-511 and 182-512 WAC;

(ii) ~~((WAC 182-505-0240, for family medical programs;))~~ A MAGI-based program referred to in WAC 182-503-0510; or

(iii) ~~((WAC 182-505-0210, for a child under the age of nineteen;~~

~~(iv) WAC 182-505-0115, for a pregnant woman;~~

~~(v) WAC 388-462-0020, for))~~ The breast and cervical cancer treatment program for women described in WAC 182-505-0120; or

~~((vi) WAC 182-523-0100, for))~~ (iv) A medical extension((s)) described in WAC 182-523-0100.

(2) AMP medically needy (MN) health care coverage is available only for children, ~~((adults age sixty-five or over, or))~~ pregnant women and persons who meet ((SSI disability)) SSI-related criteria. See WAC ~~((388-519-0100))~~ 182-519-0100 for MN eligibility and ~~((388-519-0110))~~ WAC 182-519-0110 for spending down excess income under the MN program.

(3) The agency or its designee does not consider a person's date of arrival in the United States when determining eligibility for AMP.

(4) For non-MAGI-based programs, the agency or its designee does not consider a sponsor's income and resources when determining eligibility for AMP, unless the sponsor makes the income or resources available. Sponsor deeming does not apply to MAGI-based programs.

(5) A person is not eligible for AMP if that person entered the state specifically to obtain medical care.

(6) A person who the agency or its designee determines is eligible for AMP may be eligible for retroactive coverage as described in WAC ~~((388-416-0015))~~ 182-504-0005.

(7) Once the agency or its designee determines financial and categorical eligibility for AMP, the agency or its designee then determines whether a person meets the requirements described in WAC 182-507-0115, 182-507-0120, or 182-507-0125.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0230 Washington apple health—MAGI-based long-term care ((for families and children)) program. (1) The sections that follow describe the eligibility requirements for ~~((institutional medical benefits for parents and))~~ the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program for children ((who are not aged, blind or disabled,)) and adults who are admitted for a long-term stay to a medical institution, an inpatient psychiatric facility or an institution for mental diseases (IMD):

(a) WAC ~~((388-505-0235))~~ 182-514-0235 Definitions;

(b) WAC ~~((388-505-0240))~~ 182-514-0240 General eligibility ~~((for family institutional medical coverage))~~ requirements for the WAH MAGI-based long-term care program;

(c) WAC ~~((388-505-0245))~~ 182-514-0245 Resource eligibility for ~~((family institutional medical coverage))~~ WAH MAGI-based long-term care program;

(d) WAC ~~((388-505-0250))~~ 182-514-0250 WAH MAGI-based long-term care programs for adults twenty-one years of age or older;

(e) WAC ~~((388-505-0255))~~ 182-514-0255 WAH MAGI-based long-term care program for young adults nineteen and twenty years of age;

(f) WAC ~~((388-505-0260))~~ 182-514-0260 WAH MAGI-based long-term care program for children eighteen years of age or younger;

(g) WAC ~~((388-505-0265))~~ 182-514-0265 How the ~~((department))~~ agency or its designee determines how much of an institutionalized ~~((individual's))~~ person's income must be paid towards the cost of care for the WAH MAGI-based long-term care program; and

(h) WAC ~~((388-505-0270))~~ 182-514-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by ~~((medicaid))~~ Washington apple health.

(2) ~~((Individuals who are already eligible for))~~ Recipients of a noninstitutional ((family or)) WAH children's ((medical)) program ((when they are admitted for long-term care)) as described in WAC 182-505-0210 or 182-505-0211

do not need to submit a new application for ~~((institutional medical))~~ long-term care coverage when admitted to an institution. The ~~((department))~~ agency or its designee treats ~~((their))~~ the admittance to the ~~((facility))~~ institution as a change of circumstances and determines ~~((their))~~ eligibility based upon the anticipated length of stay ~~((at the facility)).~~

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0235 Definitions. The following terms are used in WAC ~~((388-505-0230))~~ 182-514-0230 through ~~((388-505-0270))~~ 182-514-0270:

~~(("Categorically needy income level (CNIL)"—The standard used by the department to determine eligibility under a categorically needy medicaid program.))~~

"Categorically needy (CN) medical" - Full scope of care medical benefits. CN medical may be either federally funded under Title XIX of the Social Security Act or state-funded.

~~(("Categorically needy (CN) medicaid"—Federally funded full scope of care medical benefits under Title XIX of the Social Security Act.))~~

"Federal benefit rate (FBR)" - The payment standard set by the Social Security administration for recipients of supplemental security income (SSI). This standard is adjusted annually in January. Institutional standards and effective date can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

"Federal poverty level" - The income standards published annually by the federal government in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. ~~((The income standards change on April first every year.~~

~~(("Institution for mental diseases (IMD)"—A hospital, nursing facility, or other institution of more than sixteen beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. Inpatient chemical dependency facilities of more than sixteen beds which provide residential treatment for alcohol and substance abuse are also considered an IMD.~~

~~(("Institutional status"—An individual meets institutional status when he or she is admitted to a medical institution, inpatient psychiatric facility, or IMD for a period of thirty days or longer. The time period is ninety days or longer for individuals seventeen years of age and younger who are admitted to an inpatient psychiatric facility or institution for mental diseases. Institutional status is described in WAC 388-513-1320.))~~ Institutional standards and effective date can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

"Legal dependent" - A minor child, seventeen years of age and younger, and an individual eighteen years of age and older claimed as a dependent for income tax purposes; or a parent of either the applicant or the applicant's spouse claimed as a dependent for income tax purposes; or the brother or sister (including half and adoptive siblings) claimed by either the applicant or the applicant's spouse as a dependent for income tax purposes.

"Medical institution" (~~(—A medical facility that provides twenty-four hour supervision and skilled nursing care. Facilities which meet this definition include:~~

- (1) Hospitals;
- (2) Nursing homes or the nursing home section of a state veteran's facility;
- (3) Hospice care centers;
- (4) An intermediate care facility for the mentally retarded (ICF/MR); or
- (5) A residential habilitation center (RHC)) see WAC 182-500-0050.

"Medically needy income level (MNIL)" - The standard used by the (~~(department)~~) agency to determine eligibility under the medically needy medicaid program. The effective MNIL standards are described in WAC (~~(388-478-0070)~~) 182-519-0050.

"Medically needy (MN) (~~(medicaid)~~)" (~~(—Federally funded medical coverage under Title XIX of the Social Security Act. MN coverage has a more limited scope of care than CN coverage)~~) see WAC 182-500-0070.

"Personal needs allowance (PNA)" - An amount designated to cover the expenses of an individual's clothing and personal incidentals while living in a medical institution, inpatient psychiatric facility, or institution for mental diseases. PNA standards are found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/lcstandardsPNAchartsubfile.shtml>.

(~~"Psychiatric facility"~~) (~~Designated long-term inpatient psychiatric residential treatment facilities, state psychiatric hospitals, designated distinct psychiatric units, and medicare certified distinct units in acute care hospitals.)~~)

"Spendedown" (~~(—The amount of medical expenses an individual is required to incur prior to medical benefits being authorized. Spendedown is described in WAC 388-519-0100 and 388-519-0110)~~) see WAC 182-500-0100.

"Title XIX" (~~(—The portion of the federal Social Security Act, 42 U.S.C. 1396, that authorizes grants to states for medical assistance programs. Title XIX is also called medicaid)~~) see WAC 182-500-0105.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0240 Washington apple health—General eligibility requirements for (family institutional medical coverage) MAGI-based long-term care program. (1) This section applies to (~~(all individuals applying)~~) applicants for long-term care services under the (~~(family institutional medical)~~) Washington apple health (WAH) MAGI-based long-term care program. Additional rules may apply based upon (~~(an individual's)~~) a person's age at the time he or she applies for long-term care services and whether the facility the (~~(individual)~~) person is admitted to is a medical institution, inpatient psychiatric facility, or an institution for mental diseases (IMD). Additional rules are described in WAC (~~(388-505-0245)~~) 182-514-0245 through (~~(388-505-0265)~~) 182-514-0265.

(2) (~~(Individuals must meet)~~) The following requirements apply to (qualify) be eligible for (family institu-

tiona)) WAH MAGI-based long-term care coverage under this section:

(a) Institutional status described in WAC (~~(388-513-1320)~~) 182-513-1320. (~~(An individual)~~) A person meets institutional status if he or she is admitted to:

(i) A medical institution and resides, or is likely to reside, there for thirty days or longer, regardless of age;

(ii) An inpatient psychiatric facility or IMD and resides, or is likely to reside, there for thirty days or longer and is eighteen through twenty years of age; or

(iii) An inpatient psychiatric facility or IMD and resides, or is likely to reside, there for ninety days or longer and is seventeen years of age or younger.

(b) General eligibility requirements described in WAC (~~(388-503-0505)~~) 182-503-0505 (with the exception that subsections (3)(c) and (d) of that section do not apply to (~~(individuals)~~) noncitizen applicants who are eligible under one of the WAH alien ((emergency)) medical ((AEM)) programs described in chapter 182-507 WAC) and the person meets one of the following:

(i) (~~(Be a parent of, or a relative caring for, an eligible dependent child and meet the program requirements under:~~

(A) A family medical program described in WAC 388-505-0220;

(B) A transitional family medical program described in WAC 388-523-0100; or

(C) The temporary assistance for needy families (TANF) cash assistance program.

(ii) Be a child and meet the program requirements under (~~(apple health)~~) WAH for kids as described in WAC (~~(388-505-0210)~~) 182-505-0210. For the purposes of this section, a person is considered a child through the age of twenty-one;

(iii) Be an adult nineteen through sixty-four years of age who meets the criteria in WAC 182-505-0250;

(iv) Be (~~(a)~~) pregnant (~~(woman)~~) and meet the program requirements for (~~(a)~~) the WAH pregnancy ((medical)) program as described in WAC (~~(388-462-0015)~~) 182-505-0115;

(v) Meet the WAH alien ((emergency)) medical ((AEM)) program requirements as described in WAC (~~(388-438-0110)~~) 182-507-0110 (with the exception that for (~~(family)~~) MAGI-based long-term care services, ((AEM)) alien medical coverage may be authorized for children through twenty-one years of age) and:

(A) Have a qualifying emergency condition; and

(B) For payment for long-term care services and room and board costs in the institution, request prior authorization from the (~~(department's medical consultant)~~) aging and long-term support administration (AL TSA) if the (~~(individual)~~) person is admitted to a (~~(medical institution under hospice or is admitted to a)~~) nursing facility.

(~~(v)~~) Be an individual nineteen through twenty years of age but not eligible under subsections (i) through (iv) of this section.

(e) Resource requirements described in WAC 388-505-0245;

(~~(d)~~) (c) Have countable income below the applicable standard described in WAC (~~(388-505-0250(4), 388-505-0255(3) or 388-505-0260(4))~~) 182-505-0250(4), 182-505-0255(3), or 182-505-0260(4);

~~((e))~~ (d) Contribute income remaining after the post eligibility process described in WAC ~~((388-505-0265))~~ 182-505-0265 towards the cost of care in the facility, if applicable; and

~~((f))~~ (e) Be assessed as needing nursing facility level of care as described in WAC 388-106-0355 if the admission is to a nursing facility. (This does not apply to nursing facility admissions under the hospice program.)

(3) Once the ~~((department))~~ agency or its designee determines ~~((an individual))~~ a person meets institutional status, it does not count the income of parent(s), a spouse, or dependent child(ren) when determining countable income. ~~((The department counts the following as the individual's income:~~

~~(a) Income received by the individual in his or her own name;~~

~~(b) Funds given to him or her by another individual towards meeting his or her needs; and~~

~~(c) Current child support received on behalf of the individual by his or her parents.~~

~~(4) Individuals eligible for a cash grant under the temporary assistance for needy families (TANF) program can remain eligible for a cash payment and the categorically needy (CN) medicaid program while in the institution. The expected length of stay in the institution may impact the amount of the TANF payment.~~

~~(a) When the institutionalized individual is expected to return to the home within one hundred and eighty days, the department considers this to be a temporary absence from the home and the individual remains eligible for their full TANF grant. Rules defining a temporary absence are described in WAC 388-454-0015.~~

~~(b) When the department determines that the institutionalized individual's stay in the facility is likely to exceed one hundred and eighty days, the department reduces his or her share of the TANF grant to the personal needs allowance (PNA) described in WAC 388-478-0040. This is also referred to as the clothing, personal maintenance and necessary incidentals (CPI) amount.~~

~~(5) Individuals))~~ Only income received by the person in his or her own name is counted for the initial eligibility determination.

~~(4) A person who ((are)) is not a United States citizen(s) or a qualified alien((s do)) does not need to provide or apply for a Social Security number or meet the citizenship requirements under WAC ((388-424-0010 (1) or (2)))~~ 182-503-0535 as long as the requirements in subsection (2) of this section are met.

~~((6) Individuals who are))~~ (5) A person who meets the federal aged, blind or disabled ((under federal)) criteria may qualify for institutional benefits with income of up to three hundred percent of the federal benefit rate (FBR). Rules relating to institutional eligibility for an aged, blind or disabled ((individuals)) person are described in WAC ((388-513-1315)) 182-513-1315.

~~((7))~~ (6) If ((an individual)) a person does not meet institutional status, the ((department)) agency or its designee determines his or her eligibility for a noninstitutional WAH medical program. ((An individual)) A person who is determined eligible for CN or medically needy (MN) coverage under a noninstitutional program who is admitted to a nursing

facility for less than thirty days is approved for coverage for the nursing facility room and board costs, as long as the ~~((individual)) person~~ is assessed by ~~((the department))~~ ALISA as meeting nursing home level of care as described in WAC 388-106-0355.

(7) Parents and caretaker relatives who meet the criteria under WAC 182-505-0240 are not eligible for the WAH MAGI-based long-term care program and must have eligibility determined under SSI-related institutional rules described in chapter 182-513 WAC.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0245 Washington apple health—Resource eligibility for ((family institutional medical coverage)) MAGI-based long-term care program. (1) ~~((The department does not restrict or limit resources available to individuals eighteen years of age or younger when determining eligibility for family institutional medical coverage. The department does not consider, or count towards eligibility, any resources owned by the individual in this age category, or any resources owned by the individual's parent(s), spouse, or child(ren), if applicable.~~

~~(2) For individuals nineteen years of age or older, there is a one thousand dollar countable resource limit for new applicants for family medical coverage not meeting the additional resource exclusion of WAC 388-470-0026, and all of the following apply:~~

~~(a) In order to determine which resources it must count, the department follows rules in WAC 388-470-0026, 388-470-0045 (with the exception of subsection (3) relating to primary residence), 388-470-0060, and 388-470-0070.~~

~~(b) Applicants and current categorically needy (CN) or medically needy (MN) medical assistance clients receiving long-term care services under the family institutional medical program are subject to transfer of asset regulations as described in WAC 388-513-1363 through 388-513-1366.~~

~~(c) Individuals who apply for long-term care services on or after May 1, 2006, who have an equity interest greater than five hundred thousand dollars in their primary residence are not eligible for long-term care services. This does not apply if the individual's spouse or blind, disabled or dependent child under twenty-one years of age is lawfully residing in the primary residence. Individuals who are denied or terminated from long-term care services due to excess home equity may apply for an undue hardship waiver as described in WAC 388-513-1367.~~

~~(d) Once an individual has been determined eligible for any family medical program, the department does not consider any subsequent increase in that individual's resources after the month of application, as described in WAC 388-470-0026. Subsequent increases in a family's resources are not applied towards the cost of care in any month in which the resources have exceeded the eligibility standard.~~

~~(e) When both spouses of a legally married couple are institutionalized, the department determines resource eligibility for each spouse separately, as if each were a single individual.~~

(f) When only one spouse in a legally married couple applies for family institutional coverage, the rules in WAC 388-513-1350 (8) through (13) apply.

(g) For countable resources over one thousand dollars that are not otherwise excluded by WAC 388-470-0026:

(i) The department reduces the excess resources in an amount equal to medical expenses incurred by the institutionalized individual, such as:

(A) Premiums, deductibles, coinsurance or copayments for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medical plan; and

(C) Necessary medical care recognized under state law, but incurred prior to medicaid eligibility.

(ii) Medical expenses that the department uses to reduce excess resources must not:

(A) Be the responsibility of a third party payer;

(B) Have been used to satisfy a previous spenddown liability;

(C) Have been previously used to reduce excess resources;

(D) Have been used to reduce client responsibility toward cost of care;

(E) Have been incurred during a transfer of asset penalty;

or

(F) Have been written off by the medical provider (the individual must be financially liable for the expense).

(h) If an individual has excess resources remaining, after using incurred medical expenses to reduce those resources, the department uses the following calculations to determine if an individual is eligible for family institutional medical coverage under the CN or MN program:

(i) If countable income is below the CN income standard, and the combination of countable income plus excess resources is below the monthly cost of care at the state medicaid rate, the individual is eligible for family institutional medical coverage under the CN program.

(ii) If countable income is below the CN income standard, but the combination of countable income plus excess resources is above the monthly cost of care at the state medicaid rate, the individual is not eligible for family institutional medical coverage.

(iii) If countable income is over the CN income standard, and the combination of countable income plus excess resources is below the monthly cost of care at the institution's private rate plus the amount of any recurring medical expenses for institutional services, the individual is eligible for family institutional coverage under the MN program. (MN coverage applies only to individuals twenty years of age or younger.)

(iv) If countable income is over the CN income standard, but the combination of countable income plus excess resources is higher than the monthly cost of care at the institution's private rate plus the amount of any recurring medical expenses for institutional services, the individual is not eligible for family institutional coverage under the MN program. (MN coverage applies only to individuals twenty years of age or younger.) There is no resource test for applicants or recipients of the Washington apple health (WAH) modified

adjusted gross income (MAGI)-based long-term care program.

(2) The transfer of asset evaluation described in WAC 182-513-1363 does not apply to applicants or recipients who are eligible under the WAH MAGI-based long-term care program.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0250 ((Eligibility for family institutional medical for individuals)) Washington apple health—MAGI-based long-term care program for adults age twenty-one ((years of age)) or older. (1) ((Individuals)) A person twenty-one years of age or older must meet the requirements in WAC ((388-505-0240)) 182-505-0250 to qualify for ((family institutional medical)) Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term coverage under this section.

(2) ((Individuals, twenty one through sixty four years of age who are admitted to an institution for mental diseases (IMD) are not eligible for coverage under this section. Individuals who are voluntarily admitted to a psychiatric hospital may be eligible for coverage under the psychiatric indigent inpatient program described in WAC 388-865-0217.

(3) Rules governing resources are described in WAC 388-505-0245. However, if an applicant has countable resources over the standard described in WAC 388-505-0245, he or she may spend down any excess amount towards his or her cost of care as described in WAC 388-505-0265(6).

(4)) The categorically needy income level (CNIL) for ((individuals who qualify for family institutional medical)) health care coverage under this section is ((the temporary assistance for needy families (TANF) one person payment standard based on the requirement to pay shelter costs described in WAC 388-478-0020. An individual's)) one hundred thirty-three percent of federal poverty level. A person's countable income (after a standard five percentage point income disregard) must be at or below this amount to be eligible.

((5)) (3) Countable income for categorically needy (CN) coverage under this section is determined using the MAGI methodologies described in chapter 182-509 WAC.

(4) If the ((individual's)) person's income exceeds the standards to be eligible under ((a categorically needy (CN) medicaid family)) the WAH MAGI-based CN long-term care program, he or she is not eligible for ((coverage under the)) medically needy ((MN) medicaid program.

(6) Individuals eligible under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC 388-505-0265)) coverage under this section.

(5) A person, age twenty-one through sixty-four years of age who is admitted to an institution for mental diseases (IMD) is not eligible for coverage under this section.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0255 ((Eligibility for family institutional medical for individuals)) Washington apple

health—MAGI-based long-term care program for young adults nineteen and twenty years of age. (1) ~~((Individuals))~~ Persons nineteen and twenty years of age must meet the requirements in WAC ~~((388-505-0240))~~ 182-505-0210 to qualify for ~~((family institutional medical coverage))~~ the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program.

(2) ~~((Rules governing resources are described in WAC 388-505-0245. However, if an applicant has countable resources over the standard described in WAC 388-505-0245, he or she may spend down any excess resources over the standard by applying the excess amount towards his or her cost of care as described in WAC 388-505-0265(6).))~~

~~((3))~~ The categorically needy income level (CNIL) ~~((for individuals who qualify for family institutional medical coverage under this section is the temporary assistance for needy families (TANF) one person payment standard based on the requirement to pay shelter costs described in WAC 388-478-0020. An individual's countable income must be at or below this amount to be eligible.~~

~~((4))~~ is two hundred percent of the federal poverty level. A person's countable income (after a standard five percentage point income disregard) must be at or below this amount to be eligible.

(3) Countable income for categorically needy (CN) coverage under this section is determined using the MAGI methodologies described in chapter 182-509 WAC.

(4) The agency or its designee approves CN health care coverage under this section for twelve calendar months.

(5) If ((an individual's)) a person's countable income exceeds the standard described in subsection (3) of this section, the ((department)) agency or its designee determines whether ((he or she)) the person is eligible for coverage under the WAH institutional medically needy (MN) ((medicaid)) program.

~~((a) Individuals with countable income below the state monthly cost of care in the facility are eligible for MN without spenddown.~~

~~((b) If the individual's countable income exceeds the state monthly cost of care but is under the private cost of care plus the amount of any recurring medical expenses for institutional services, he or she may be required to spend down their income as described in WAC 388-519-0110.~~

~~((c) If the individual's countable income exceeds the private monthly cost of care plus the amount of any recurring medical expenses for institutional services, he or she is not eligible for family institutional medical coverage.~~

~~((5))~~ (6) If ((an individual)) the person is a medicaid applicant or ((current medical assistance client)) recipient in the month of his or her twenty-first birthday and receives active inpatient psychiatric or inpatient chemical dependency treatment which extends beyond his or her twenty-first birthday, the ((department)) agency or its designee approves or continues WAH CN or MN ((medicaid)) health care coverage until the date the ((individual)) person is discharged from the facility or until his or her twenty-second birthday, whichever occurs first.

~~((6) Individuals))~~ (7) Young adults eligible under the provisions of this section may be required to contribute a por-

tion of their income towards the cost of care as described in WAC ~~((388-505-0265))~~ 182-514-0265.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0260 ((Eligibility for family institutional medical)) Washington apple health—MAGI-based long-term care coverage for children eighteen years of age or younger. (1) ~~((Individuals))~~ Children eighteen years of age or younger must meet the requirements in WAC ~~((388-505-0240))~~ 182-514-0240 to qualify for ~~((family institutional medical coverage))~~ the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program.

(2) When ~~((an individual))~~ a child eighteen years of age or younger is eligible for the premium-based ~~((categorically needy (CN) coverage under apple health))~~ WAH for kids program as described in WAC ~~((388-505-0210(4)))~~ 182-505-0210, the ~~((department))~~ agency or its designee redetermines his or her eligibility using the provisions of this section so that the ~~((individual))~~ child's family is not required to pay the premium.

~~((3) ((The department does not restrict or limit the resources available to individuals eighteen years of age or younger when determining eligibility for family institutional medical coverage. The department does not consider, or count towards eligibility any resources owned by the individual in this age category, or any resources owned by the individual's parent(s), spouse, or child(ren), if applicable.~~

~~((4))~~ The categorically needy income level (CNIL) ~~((for individuals who qualify for family institutional medical))~~ WAH long-term care coverage under this section is two hundred percent of the federal poverty level ~~((income standard. Once the department determines an individual meets institutional status, it does not count the income of a parent(s), spouse, or dependent children (if applicable) when determining the individual's countable income))~~ (after a standard five percentage point income disregard).

(4) Countable income for categorically needy (CN) coverage under this section is determined using the MAGI methodologies described in chapter 182-509 WAC.

(5) The ~~((department))~~ agency or its designee approves CN ~~((medical))~~ health care coverage under this section for twelve calendar months. If ~~((an individual))~~ the child is discharged from the facility before the end of his or her certification period, ~~((he or she))~~ the child remains continuously eligible for CN ~~((medical))~~ health care coverage through the end of the original certification date, unless he or she ages out of the program, moves out of state, is incarcerated, or dies.

(6) If ~~((an individual))~~ a child is not eligible for CN ~~((medical))~~ health care coverage under this section, the ~~((department))~~ agency or its designee determines ~~((his or her))~~ the child's eligibility for health care coverage under the WAH institutional medically needy (MN) program described in WAC 182-513-1395.

~~((a))~~ (7) MN coverage is only available for ((an individual)) a child who meets the citizenship requirements under WAC ((388-424-0010 (1) or (2))) 182-503-0535.

~~((b) Individuals with countable income below the state monthly cost of care in the facility are eligible for MN without spenddown.~~

~~(c) If the individual's countable income exceeds the state monthly cost of care, but is under the private monthly cost of care plus the amount of any recurring medical expenses for institutional services, the department may require the individual to spend down his or her income as described in WAC 388-519-0110.~~

~~(d) If the individual's countable income exceeds the private monthly cost of care plus the amount of any recurring medical expenses for institutional services, he or she is not eligible for family institutional medical coverage.~~

~~(7)) (8) The facility where the ((individual)) child resides may submit an application on the ((individual's)) child's behalf and may act as an authorized representative ((for the individual)) if the ((individual)) child is:~~

~~(a) In a court ordered, out-of-home placement under chapter 13.34 RCW; or~~

~~(b) Involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW.~~

~~((8) Individuals)) (9) Children who are eligible for ((family institutional medical)) WAH MAGI-based long-term care coverage under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC ((388-505-0265)) 182-514-0265.~~

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0265 Washington apple health—How the ((department)) agency or its designee determines how much of an institutionalized ((individual's)) person's income must be paid towards the cost of care for the MAGI-based long-term care program. (1) ~~((Individuals))~~ A person who resides in a medical institution, inpatient psychiatric facility, or an institution for mental diseases (IMD) may be required to pay a portion of their income towards the cost of care. This section explains how the ((department)) agency or its designee calculates how much ~~((an individual is required to))~~ a person pays to the facility under the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program. This process is known as the post-eligibility process. If ~~((an individual))~~ a person does not have income, he or she does not have to pay.

(2) The ((department)) agency or its designee determines available income by considering ~~((an individual's))~~ a person's total gross income before any mandatory deductions from earnings. Income that was not counted in the initial eligibility process under the MAGI methodology is counted for the post-eligibility process unless the income is excluded under ~~((federal or state law. See WAC 388-450-0015 for examples of excluded income types))~~ WAC 182-513-1340.

(3) The following income allocations and exemptions are deducted from ~~((an individual's))~~ the person's total gross income to determine his or her available income. The ((department)) agency or its designee uses the rules described in WAC ((388-513-1380)) 182-513-1380 to calculate the amount of these allocations and exemptions, with the excep-

~~tion that ((under the family institutional medical program, there is no deduction for earned income in the post-eligibility process))~~ the deduction of wages stated in WAC 182-513-1380 (4)(c) is not allowed.

(a) A personal needs allowance (PNA) and maintenance allocation. The combined totals of all of the following deductions cannot exceed the medically needy income level (MNIL):

(i) PNA as allowed under WAC ((388-478-0040)) 182-513-1300;

(ii) Mandatory federal, state, or local income taxes owed by the ((client)) person; and

(iii) Court ordered guardianship fees and administrative costs, including attorney fees, as described in chapter 388-79 WAC.

(b) Income garnished to comply with a court order for child support.

(c) Community spouse allocation.

(d) Family maintenance allocation if married with dependents.

(e) Legal dependent allocation for an unmarried ((client)) person with dependents. The maximum allocation is based upon the MNIL standard for the number of dependents minus the dependent's income.

(f) Medical expense allocation. The ((department)) agency or its designee allows a deduction for unpaid medical expenses for which the individual is still liable. Medical expenses allowed for this allocation are described in WAC ((388-513-1350)) 182-513-1350.

(g) Housing maintenance exemption:

(i) ~~((For an individual))~~ A person who is financially responsible for the costs of maintaining a home while he or she is in an institution ~~((, the department allows))~~ is allowed a deduction, limited to a six-month period, of up to one hundred percent of the one-person poverty level per month, when a physician has certified that the ((individual)) person is likely to return to the home within the six-month period.

(ii) ~~((An individual))~~ A person eighteen years of age or younger is not eligible for the housing maintenance exemption unless the housing expense is the ((individual's)) person's financial responsibility. Children are not financially responsible for the housing expenses incurred by their parents.

(4) ~~((Individuals))~~ A person may keep a personal needs allowance of up to the ~~((one person temporary assistance for needy families (TANF) payment standard (based upon the requirement to pay shelter costs))~~ effective MNIL in the month ~~((they are))~~ he or she admitted and in the month ~~((they are))~~ the person discharged from the facility. See WAC 182-519-0050 for the effective MNIL standards.

(5) Any income ~~((which remains))~~ remaining is called the person's responsibility toward the cost of care and must be paid to the facility ((towards the cost of care).

~~((6) Individuals nineteen years of age or older who qualify for categorically needy (CN) or medically needy (MN) coverage but have countable resources in excess of the resource limits as described in WAC 388-505-0245 must pay an amount equal to the excess amount to the facility towards the cost of their care in the month of application. This amount is in addition to the amount calculated under subsections (2)~~

~~through (4) of this section (if any)). This amount is also called the person's participation.~~

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

WAC 182-514-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by medicaid. (1) ~~((Individuals))~~ A person who is admitted to Eastern or Western State Hospital for inpatient psychiatric treatment ~~((may qualify))~~ is eligible for categorically needy (CN) ~~((medicaid))~~ health care coverage ~~((and aged, blind, disabled (ABD) cash benefits to cover their personal needs allowance (PNA)))~~ in limited circumstances.

(2) To be eligible under this program, ~~((individuals))~~ a person must:

(a) Be ~~((eighteen through))~~ twenty years of age or younger, or sixty-five years of age or older;

(b) Meet institutional status under WAC ~~((388-513-1320))~~ 182-513-1320;

(c) Be involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW;

(d) ~~((Meet the general eligibility requirements for the ABD cash program as described in WAC 388-400-0060;~~

~~((e)))~~ Have countable income below ~~((the payment standard described in WAC 388-478-0040; and~~

~~((f)))~~ Have countable resources below one thousand dollars. Individuals eligible under the provisions of this section may not apply excess resources towards the cost of care to become eligible. An individual with resources over the standard is not eligible for assistance under this section);

(i) Two hundred percent of the federal poverty level if age twenty years or younger; or

(ii) The SSI-related CN income level if age sixty-five years or older and have countable resources below the standard described in WAC 182-512-0010.

(3) ~~((ABD clients))~~ A person who receives active psychiatric treatment in Eastern or Western State Hospital at the time of ~~((their))~~ his or her twenty-first birthday continues to be eligible for ~~((medicaid))~~ CN health care coverage until the date ~~((they are))~~ he or she is discharged from the facility or until ~~((their))~~ the person's twenty-second birthday, whichever occurs first.

(4) A person between the age of twenty-one and sixty-five, with the exception of subsection (3) of this section, is not eligible for federally funded health care coverage through Washington apple health.

Title of Rule and Other Identifying Information: Chapter 200-100 WAC, Self-insurance requirements governing local government and nonprofit self-insurance.

Hearing Location(s): Department of Enterprise Services (DES), 1500 Jefferson Street, Room 1213, Olympia, WA 98504, on September 30, 2013, at 9:00 a.m.; and at the Central Washington University, Student Union Building, Room 137B, 400 East University Way, Ellensburg, WA 98926, on October 2, 2013, at 12:00 p.m.

Date of Intended Adoption: December 4, 2013.

Submit Written Comments to: Online <https://www.surveymonkey.com/s/RiskPoolRulemaking>, e-mail rules@des.wa.gov, by mail to Devin Proctor, Rules and Policy Coordinator, DES, Contracts and Legal Services Division, P. O. Box 41410, Olympia, WA 98504-1410, fax (360) 586-2426 (comments submitted by fax must be ten pages or less), comments will be accepted through October 11, 2013.

Assistance for Persons with Disabilities: Contact Amy Julsrud by phone (360) 407-9317 or e-mail amy.julsrud@des.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The following amendments were made:

WAC 200-100-02023 Standards for operation—Elections of the governing body.

- The proposed changes provide flexibility to the risk pools to establish the governance structure best suited to the size of their membership.

WAC 200-100-03001 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements.

- The proposed changes:
 - o Clarify that estimates must be written, and standardizes current actuarial practice of providing estimates at various actuarial confidence levels as indicated in the proposed change. The proposed change allows the pool, its members and the state risk manager to clearly identify the level of funds available to pay claims.
 - o Provide clarity as to when a pool has met the primary asset test.
 - o Increases the amount of combined assets needed from the seventy percent to the eighty percent confidence level.
 - o Establish criteria for and clearly identifies a second solvency test as the total asset test.
 - o Establish a remedy to be taken by the state risk manager when a pool fails to respond to the state risk manager's requests for an improvement plan.
 - o Identifies the procedure to be followed by the state risk manager when a pool operating under supervisory watch of the state risk manager declines to the point that monetary reserves available to pay claims fall below the seventy percent confidence level.
 - o Clarify the specific work to be done by an independent actuary on behalf of the state risk manager.

WSR 13-17-106

PROPOSED RULES

DEPARTMENT OF

ENTERPRISE SERVICES

[Filed August 21, 2013, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-065.

WAC 200-100-037 Standards for management and operations—Financial plans.

- The proposed changes:
 - o Reduce the time that audited financial statements are to be provided to the state risk manager from one year to eight months from a pool's fiscal year end.
 - o Prevents loaning of moneys needed to pay claims to any entity.

WAC 200-100-060 Standards for management and operations—State risk manager reports.

- The proposed changes reduce the time that audited financial statements are to be provided to the state risk manager from one year to eight months from a pool's fiscal year end. This change also appears in WAC 200-100-037.

Reasons Supporting Proposal: The department took input from a wide-ranging group of stakeholders and these are highlights of the changes that came out of that exchange:

- Increases the combined asset requirements for risk pools from the current seventy percent to the eighty percent confidence level.
- Clarifies when a pool has met the primary asset test.
- Establishes criteria for and clearly identifies a second solvency test as the total asset test.
- Identifies the procedure to be followed by the state risk manager when a pool operating under supervisory watch of the state risk manager declines to the point that monetary reserves available to pay claims fall below the seventy percent confidence level.
- Clarifies the specific work to be done by an independent actuary on behalf of the state risk manager.

Statutory Authority for Adoption: RCW 48.62.061.

Statute Being Implemented: Chapter 48.62 RCW.

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: To obtain a copy of the rules, or to submit written comments on the rules, please contact Devin Proctor, Rules and Policy Coordinator, phone (360) 407-8269, e-mail devin.proctor@des.wa.gov, written comments online <https://www.surveymonkey.com/s/RiskPoolRulemaking>, e-mail rules@des.wa.gov.

Name of Proponent: DES, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Zeigler, 1500 Jefferson Avenue, Olympia, WA 98504, (360) 407-9209; Implementation: Ro Marcus, 1500 Jefferson Avenue, Olympia, WA 98504, (360) 407-8569; and Enforcement: Lucy Isaki, 1500 Jefferson Avenue, Olympia, WA 98504, (360) 407-8143.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rules have no or minimal cost to small business.

A cost-benefit analysis is not required under RCW 34.05.328. DES is not an agency listed in RCW 34.05.328 (5)(a)(i). Further DES does not voluntarily make section 201

applicable to this rule adoption nor to date, has joint administrative rules review committee made section 201 applicable to this rule adoption.

August 21, 2013
Jack Zeigler
Policy and Rules Manager

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-02023 Standards for operation—Elections of the governing body. The governing body of every joint self-insurance program shall be elected by a majority of the members. Elections may be conducted during a regular meeting of the governing body or by mail-in ballot. If mail-in ballots are used, the ballots are to be secured and remain unopened until the next regular meeting of the governing body. The opening and counting of the ballots shall be conducted by the governing body of the joint self-insurance program during the next regular meeting and retained in compliance with public records retention laws. ~~((Each ballot shall be read orally as to the member name and vote and recorded in the meeting minutes.))~~ Joint self-insurance programs governed by a governing body which requires the inclusion of a voting representative from each member entity in such governing body are exempt from the requirements of this section.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-03001 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements. (1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides written estimates of the liability for unpaid claims measured at the expected level and the seventy, eighty, and ninety percent confidence level.

(2) The governing body of the joint self-insurance program shall establish and maintain primary assets in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs meeting this requirement shall be considered in compliance with the primary asset test. All joint self-insurance programs that do not meet the requirements ~~((to maintain sufficient primary assets))~~ of the primary asset test shall notify the state risk manager in writing of the condition. The state risk manager shall take corrective action, which may include the service of a cease and desist order upon the program, to require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.

(3) The governing body of ~~((the))~~ every joint self-insurance program operating under this chapter shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the ~~((seventy))~~ eighty percent confidence level as determined by the program's actuary as of fiscal year end.

(4) All joint self-insurance programs authorized by chapter 48.62 RCW shall meet the requirements of both the pri-

mary asset test and the total asset test. The governing body of all joint self-insurance programs that do not meet ~~((the reserve))~~ requirements ~~((to maintain sufficient primary and secondary assets))~~ of the total asset test shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal for improving the financial condition of the self-insurance program and a time frame for completion. The state risk manager shall approve or deny the proposed plan in writing within thirty days of receipt of the final plan submission.

Joint self-insurance programs operating under an approved plan and making satisfactory progress according to the terms of the plan shall remain under supervisory watch by the state risk manager until the terms of the approved plan have been met. Programs under supervisory watch but not making satisfactory progress may be subject to the following requirements:

(a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;

(b) Submission of quarterly reports;

(c) On-site monitoring by the state risk manager; or

(d) Service of a cease and desist order upon the program.

(5) Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include written notification to every member of the joint self-insurance program, the service of a cease and desist order upon the program, and other available remedies necessary to ensure the program operates in a financially sound manner.

(6) All joint self-insurance programs that do not maintain total primary and secondary assets in an amount equal to or greater than unpaid claim estimate at the seventy percent confidence level, as determined by the program's actuary, as of fiscal year end shall be issued a cease and desist order by the state risk manager. Such programs will be considered under a supervisory cease and desist order.

~~((4))~~ (7) The state risk manager shall evaluate the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, member equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the governing body and requirements for corrective plans.

~~((5))~~ (8) When the state risk manager determines it necessary to analyze the program's soundness and financial safety, the state risk manager may obtain an independent actuarial evaluation to determine the ~~((adequacy of reserves))~~ accuracy of the estimate for unpaid claims liabilities, including the estimate of unallocated loss adjustment expenses. Costs of these services shall be the responsibility of the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-037 Standards for management and operations—Financial plans. (1) All joint self-insurance programs shall maintain a written plan for managing the financial resources of the program. The financial plan shall include:

(a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles;

(b) An investment policy which conforms to RCW 48.62.111 governing the investments of the program; and

(c) The preparation and submission of accurate and timely annual financial reports of the program as prescribed by the state auditor's office.

(d) The submission of audited financial statements to the state risk manager within ~~((one year))~~ eight months of the program's fiscal year end which meet the requirements of the state auditor and state risk manager as described in ~~((RCW 82.60.060(3))~~ this chapter.

(2) No financial plan of a joint self-insurance program shall permit any loans ~~((to any member))~~ from primary assets held for payment of unpaid claims at the expected level as determined by an actuary as of fiscal year end.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-060 Standards for management and operations—State risk manager reports. (1) Every joint property and liability self-insurance program authorized to transact business in the state of Washington shall submit the annual report to the state risk manager.

(2) The annual report to the state risk manager shall require the following information to be submitted in electronic form:

(a) Unaudited annual financial statements, including attestation, as provided to the state auditors office;

(b) Actuarial reserve review report on which the net claims liabilities at fiscal year end reported in the unaudited financial statements are based;

(c) Copies of all insurance coverage documents;

(d) List of contracted consultants;

(e) Details of changes in articles of incorporation, bylaws or foundation agreement;

(f) Details of services provided by contract to nonmembers;

(g) List of members added or terminated.

Such reports shall be submitted to the state risk manager no later than one hundred fifty days following the completion of the joint program's fiscal year.

(3) Audited financial statements shall be provided to the state risk manager within ~~((one year))~~ eight months of the program's fiscal year end and comply with requirements for submission of audited financial statements established by the state risk manager.

(4) All joint self-insurance programs shall submit quarterly financial reports if, in the estimation of the state risk manager, the financial condition of a program warrants additional quarterly reporting requirements.

August 21, 2013
Sharon Foster
Chairman

(5) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

- (a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;
- (b) On-site monitoring by the state risk manager;
- (c) Service of a cease and desist order upon the program.

WSR 13-17-111
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed August 21, 2013, 10:48 a.m.]

Supplemental Notice to WSR 13-11-026.

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

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

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on September 25, 2013, at 10:00 a.m.

Date of Intended Adoption: October 2, 2013.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by September 25, 2013.

Assistance for Persons with Disabilities: Contact Karen McCall by September 25, 2013, (360) 664-11631 [664-1631].

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

Revisions to the proposed rules are needed. The board is filing a second supplemental CR-102 to include the revisions.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.630.

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

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

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

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

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

NEW SECTION

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

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

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

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

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

(4) The board may make an exception to the twenty mile travel distance for the following: A spirits retail license application is for a location where the significant mode of travel is other than by automobile.

WSR 13-17-112
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)

[Filed August 21, 2013, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-116.

Title of Rule and Other Identifying Information: The department proposes to amend current sections and adopt new sections in chapter 388-845 WAC as identified below.

The proposed amendments are in WAC 388-845-0001 Definitions, 388-845-0015 What HCBS waivers are provided by the developmental disabilities administration (DDA)?, 388-845-0020 When were the HCBS waivers effective?, 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0035 Am I guaranteed placement on a waiver if I meet waiver criteria?, 388-845-0040 Is there a limit to the number of people who can be enrolled in each HCBS waiver?, 388-845-0041 What is DDD responsibility to provide my services under the DDD HCBS waivers administered by DDD?, 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled?, 388-845-0050 How do I request to be enrolled in a waiver?, 388-845-0051 How will I be notified of the decision

by DDD to enroll me in a waiver?, 388-845-0052 What is the process if I am already on a DDD HCBS waiver and request enrollment onto a different waiver DDD HCBS?, 388-845-0055 How do I remain eligible for the waiver?, 388-845-0060 Can my waiver enrollment be terminated?, 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver?, 388-845-0070 What determines if I need ICF/ID level of care?, 388-845-0100 What determines which waiver I am assigned to?, 388-845-0105 What criteria determine assignment to the community protection waiver?, 388-845-0110 Are there limitations to the waiver services I can receive?, 388-845-0115 Does my waiver eligibility limit my access to DDD nonwaiver services?, 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver?, 388-845-0200 What waiver services are available to me?, 388-845-0205 Basic waiver services (repealed), 388-845-0210 Basic Plus waiver services, 388-845-0215 CORE waiver services, 388-845-0220 Community protection waiver services, 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services, 388-845-0305 Who is a qualified provider of AFH services?, 388-845-0405 Who is a qualified provider of ARC services?, 388-845-0420 Who is a qualified provider of assistive technology?, 388-845-0425 Are there limits to the assistive technology I can receive?, 388-845-0500 What is behavior support and consultation?, 388-845-0501 What is included in behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?, 388-845-0505 Who is a qualified provider of behavior management and consultation?, 388-845-0506 Who is a qualified provider of behavior ((management)) support and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?, 388-845-0510 Are there limits to the behavior support and consultation I can receive?, 388-845-0603 Who is eligible to receive community access services?, 388-845-0605 Who are qualified providers of community access services?, 388-845-0610 Are there limits to community access services I can receive?, 388-845-0700 What is a community guide service?, 388-845-0705 Who is a qualified community guide?, 388-845-0710 Are there limitations to the community guide services I can receive?, 388-845-0750 What are community transition services?, 388-845-0800 What is emergency assistance?, 388-845-0810 How do I qualify for emergency assistance?, 388-845-0820 Are there limits to my use of emergency assistance?, 388-845-0900 What are environmental accessibility adaptations?, 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations?, 388-845-0910 What limitations apply to environmental accessibility adaptations?, 388-845-1000 What are extended state plan services?, 388-845-1010 Who is a qualified provider of extended state plan services?, 388-845-1015 Are there limits to the extended state plan services I can receive?, 388-845-1030 What are individual technical assistance services?, 388-845-1035 Who are qualified providers of individualized technical assistance services?, 388-845-1040 Are there limits to the individualized technical assistance services I can receive?, 388-845-1100 What are behavioral health crisis diversion bed services?, 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services?, 388-845-1110 What are the limits of

mental health crisis diversion bed services?, 388-845-1150 What are mental health stabilization services?, 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?, 388-845-1175 Who is a qualified provider of nurse delegation?, 388-845-1300 What are personal care services?, 388-845-1305 Who are the qualified providers of personal care services?, 388-845-1310 Are there limits to the personal care services I can receive?, 388-845-1400 What are prevocational services?, 388-845-1405 Who are the qualified providers of prevocational services?, 388-845-1410 Are there limits to the prevocational services I can receive?, 388-845-1505 Who are qualified providers of residential habilitation services for the Core waiver?, 388-845-1510 Who are qualified providers of residential habilitation services for the community protection waiver?, 388-845-1515 Are there limits to the residential habilitation services I can receive?, 388-845-1600 What is respite care?, 388-845-1605 Who is eligible to receive respite care?, 388-845-1607 Can someone who lives with me be my respite provider?, 388-845-1610 Where can respite care be provided?, 388-845-1615 Who are qualified providers of respite care?, 388-845-1620 Are there limits to the respite care I can receive?, 388-845-1650 What are sexual deviancy evaluations?, 388-845-1655 Who is a qualified provider of sexual deviancy evaluations?, 388-845-1660 Are there limitations to the sexual deviancy evaluations I can receive?, 388-845-1705 Who is a qualified provider of skilled nursing services?, 388-845-1710 Are there limitations to the skilled nursing services I can receive?, 388-845-1800 What are specialized medical equipment and supplies?, 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies?, 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies?, 388-845-1845 Who are qualified providers of specialized nutrition and specialized clothing?, 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing?, 388-845-1900 What are specialized psychiatric services?, 388-845-1910 Are there limitations to the specialized psychiatric services I can receive?, 388-845-2000 What is staff/family consultation and training?, 388-845-2005 Who is a qualified provider of staff/family consultation and training?, 388-845-2010 Are there limitations to the staff/family consultation and training I can receive?, 388-845-2100 What are supported employment services?, 388-845-2105 Who are qualified providers of supported employment services?, 388-845-2110 Are there limits to the supported employment services I can receive?, 388-845-2160 What is therapeutic equipment and supplies?, 388-845-2165 Who are qualified providers of therapeutic equipment and supplies?, 388-845-2200 What are transportation services?, 388-845-2205 Who is qualified to provide transportation services?, 388-845-2210 Are there limitations to the transportation services I can receive?, 388-845-2265 Who are providers of vehicle modifications?, 388-845-2270 Are there limitations to my receipt of vehicle modification services?, 388-845-3000 What is the process for determining the services I need?, 388-845-3055 What is a waiver individual support plan (ISP)?, 388-845-3056 What if I need assistance to understand my individual support plan?, 388-845-3060 When is my individual support plan effective?, 388-845-3061 Can a change in my individual support plan be effective

before I sign it?, 388-845-3062 Who is required to sign or give verbal consent to the individual support plan?, 388-845-3063 Can my individual support plan be effective before the end of the month?, 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)?, 388-845-3075 What if my needs change?, 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the (~~Basic or~~) Basic Plus waiver?, 388-845-3085 What if my needs exceed what can be provided under the CIIBS, Core or Community Protection waiver?, 388-845-3090 What if my identified health and welfare needs are less than what is provided in my current waiver?, 388-845-3095 Will I have to pay toward the cost of waiver services?, 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver?, 388-845-4010 How do I appeal a department action?, and 388-845-4015 Will my services continue during an appeal?

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 October 22, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 23, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 22, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 8, 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 amend and add new sections to chapter 388-845 WAC, DDD home and community based services waivers, in order to comply with the requirements of SSB 6384 (related to community access services); to remove basic waiver, to add dental services as a waiver service option until January 1, 2014; to align this chapter with amendments to chapter 388-828 WAC for community access services; and to make updates to WAC and RCW references, titles and links, names of state agencies and updates to language structure so that readers will have an easier and better overall understanding of the rules.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040, 74.08.090.

Statute Being Implemented: RCW 71A.12.030, 71A.12.040, 34.05.100, 71A.12.120.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Kris Pederson, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3445; and Enforcement: Mark Eliason, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business 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.

August 21, 2013
Katherine I. Vasquez
Rules Coordinator

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 13-19 issue of the Register.

WSR 13-17-113
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed August 21, 2013, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-068 and 13-10-069.

Title of Rule and Other Identifying Information: Chapter 308-93 WAC, vessel registration and certificate of title.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on September 30, 2013, at 3:00 p.m.

Date of Intended Adoption: October 1, 2013.

Submit Written Comments to: Cathie Jelvik, P.O. Box 9909, Olympia, WA 98507-8500, e-mail cjelvik@dol.wa.gov, fax (360) 570-7892, by September 27, 2013.

Assistance for Persons with Disabilities: Contact Cathie Jelvik by September 27, 2013, TTY (360) 902-3812 or (360) 902-3811.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules amend WAC 308-93-055 and 308-93-056 to correct references to vessel permits necessary to comply with federal law, 46 U.S.C. 12307, regarding recreational vessel registration. The proposed rule change also removes redundant information in the rules.

Reasons Supporting Proposal: The rule changes are necessary to address the findings of a United States Coast Guard review of the department's vessel registration program and to comply with recent Washington state legislation.

Statutory Authority for Adoption: RCW 88.02.610 and 88.02.620.

Statute Being Implemented: RCW 88.02.610 and 88.02.620.

Rule is necessary because of federal law, 46 U.S.C. 12307.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Cathie Jelvik, Olympia, (360) 902-3812; Implementation and Enforcement: Toni Wilson, Olympia, (360) 902-3811.

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

conomic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

August 21, 2013
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-21-025, filed 10/9/06, effective 11/9/06)

WAC 308-93-055 Vessels from out-of-state operating in this state—~~((Identification document)) Nonresident vessel permit required.~~ (1) ~~((What documentation must be carried aboard a vessel from another state or out-of-country when being operated upon the waters of this state?))~~ The current foreign vessel registration is valid for the first sixty days of operation. In addition the following must apply:

(a) ~~The vessel must have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation, if the vessel is remaining in this state for personal use or enjoyment.~~

(b) ~~On or before the sixty-first day of use, the foreign vessel owner must obtain a vessel sixty-day temporary identification document issued by the department, its agents or subagents.~~

(c) ~~A second sixty-day temporary identification document must be purchased on or before the one hundred twenty-first day of use in this state.~~

~~(2))~~ What must I provide to obtain a nonresident vessel ((sixty-day temporary identification document)) permit? You must provide the following:

(a) Proof of nonresidency by showing the vessel owner's out-of-state driver's license or out-of-state photo identification;

(b) A copy of the current foreign vessel registration or current United States Coast Guard certificate of documentation;

(c) Date the vessel first came into the state;

(d) A nonrefundable fee of twenty-five dollars plus a filing fee and subagent fee, if applicable (~~(, per vessel sixty-day temporary identification document)).~~

~~((3))~~ (2) How many nonresident vessel ((sixty-day temporary identification documents)) permits may be obtained? ~~((Not more than))~~ You may obtain two ~~((may be obtained))~~ nonresident vessel permits in any continuous twelve-month period for any single vessel. The twelve months begins on the date the vessel first entered this state.

~~((4))~~ How do I display the vessel sixty-day temporary identification document?

(a) ~~Keep aboard at all times when moored and during operation;~~

(b) ~~Displayed in the windshield, side window, cockpit or operation area of the vessel, so that it is visible to law enforcement from either the dock or from the water;~~

(c) ~~Protected from the weather.~~

~~((5))~~ (3) How do I display the vessel visitor permit? The permit must be visible to law enforcement from either

the dock or from the water. It must be kept aboard the vessel at all times when moored and during operation and protected from the weather.

The permit must be clearly displayed either:

(a) In the windshield;

(b) On side window;

(c) In the cockpit; or

(d) In the operation area of the vessel.

(4) If the vessel owner is not available, how do I obtain a nonresident vessel ((sixty-day temporary identification document)) permit? The person applying for the nonresident vessel ((sixty-day temporary identification document)) permit must have a:

(a) Notarized ~~((/))~~ or certified power of attorney from a registered owner of the vessel;

(b) Copy of the vessel owner's out-of-state driver's license or photo identification; and

(c) Copy of the out-of-state or out-of-country registration certificate.

AMENDATORY SECTION (Amending WSR 01-03-128, filed 1/23/01, effective 2/23/01)

WAC 308-93-056 Out of country vessel operating in this state—~~((Identification document)) Vessel visitor permit required.~~ (1) ~~((What documentation must be carried aboard an out-of-country vessel when being operated upon the waters of this state?))~~

(a) ~~The current out-of-country vessel registration or a United States Customs Service Cruising License is valid for the first sixty days of operation when the vessel is remaining in this state for personal use or enjoyment.~~

(b) ~~The foreign vessel must have been issued a valid number or registration issued by a country other than the United States or a United States Customs Service Cruising License~~

(c) ~~On or before the sixty-first day of use, the out of country vessel owner must obtain a vessel out of country permanent identification document issued by the department, its agents or subagents.~~

~~((2))~~ What must I provide to obtain a vessel ((out of country permanent identification document)) visitor permit? You must provide the following:

(a) Proof of ~~((identification as described in WAC 308-56A-275(2)))~~ nonresidency, by showing the vessel owner's out-of-state driver's license or out-of-state photo identification;

(b) A copy of the current foreign vessel registration ~~((or current United States Coast Guard certificate of documentation))~~, or United States Customs Service Cruising License;

(c) Date the vessel first came into the state;

(d) A nonrefundable fee of twenty-five dollars plus a filing fee and subagent fee, if applicable.

~~((3))~~ (2) How many vessel ((out of country permanent identification documents)) visitor permits may be obtained? You may obtain one ~~((, the))~~ vessel ((out of country permanent identification document)) visitor permit which is valid as long as the vessel continues to be registered in a country other than the United States or has a United States Customs Service Cruising License.

(3) What if the vessel is sold or transferred to a new owner? If the vessel is sold or transferred, the new owners may apply for a corrected vessel (~~(out of country permanent identification document)~~) visitor permit listing the new owner's name and address. The new owner (~~(shall)~~) must provide the information in subsection (1) of this section and pay a nonrefundable fee of three dollars plus a filing fee and sub-agent fee, if applicable.

(4) How do I display the vessel (~~(out of country permanent identification document)~~) visitor permit? (~~The vessel out of country permanent identification document must be:~~

~~(a) Kept aboard the vessel at all times when moored and during operation;~~

~~(b) Displayed in the windshield, side window, cockpit or operation area of the vessel, so that it is visible to law enforcement from either the dock or from the water;~~

~~(c) Protected from the weather.)~~ The permit must be visible to law enforcement from either the dock or from the water. It must be kept aboard the vessel at all times when moored and during operation and protected from the weather. The permit must be clearly displayed either:

(a) In the windshield;

(b) On side window;

(c) In the cockpit; or

(d) In the operation area of the vessel.

(5) If the vessel owner is not available, how do I obtain a vessel (~~(out of country permanent identification document)~~) visitor permit? (~~If the vessel owner is not available,))~~ The person applying for the vessel (~~(out of country permanent identification document)~~) visitor permit must have a:

(a) Notarized(✓) or certified power of attorney from a registered owner of the vessel; and

(b) Copy of the valid registration (~~(numbers)~~) issued by a country other than the United States or a United States Customs Service Cruising License.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 19, 2013, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In December 2012, ecology revised four of its SEPA regulations: WAC 197-11-315, 197-11-800, 197-11-906 and 197-11-960, effective January 28, 2013. The agency's SEPA regulations incorporate three of these sections by reference. To ensure consistency between the two sets of regulations, the agency staff proposes to add a specific reference to the effective date of January 28, 2013, in Section 2.02, Adoption by Reference. The result would allow the agency to rely upon the updated versions of WAC 197-11-315, 197-11-800, and 197-11-960. WAC 197-11-906 relates specifically to the ability of agencies to adopt SEPA regulations. This amendment to Section 2.02 would also make clear that the agency is referring to the most current version of ecology's SEPA regulations through-out Regulation I, Article 2.

Reasons Supporting Proposal: Ecology's revisions to the SEPA checklist requirements in WAC 197-11-315 and 197-11-960 provide greater flexibility to agencies in their review and use of SEPA checklists. For example, they allow explicit consideration of non-SEPA legal authorities as part of the review of nonproject actions. Under SEPA, nonproject actions are those actions broader than project proposals, and can include the adoption of plans, policies or programs. It would be useful to the agency to be able to employ the greater flexibility identified in WAC 197-11-315 and 197-11-960. Ecology's revisions to WAC 197-11-800 update a number of categorical exemptions to SEPA review. Most do not apply to the agency, but some do, such as granting variances under RCW 70.94.181 or government procedural actions. Thus, it is important for the agency to keep our incorporation of this section current. Finally, it is useful to be clear that in Regulation I, Article 2 the agency is relying upon the most current version of ecology's SEPA rules. There are no costs associated with this proposed amendment.

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.

August 21, 2013
Craig Kenworthy
Executive Director

WSR 13-17-118

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed August 21, 2013, 11:39 a.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, Section 2.02 (Adoption by Reference).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 26, 2013, at 8:45 a.m.

Date of Intended Adoption: September 26, 2013.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@psccleanair.org, fax (206) 343-7522, by September 25, 2013.

AMENDATORY SECTION**REGULATION I, SECTION 2.02 ADOPTION BY REFERENCE**

For purposes of this regulation, ((F)) the Agency adopts by reference the following sections of chapter 197-11 WAC, in effect as of January 28, 2013 ((by reference)):

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-250 SEPA/Model Toxics Control Act integration.
- 197-11-253 SEPA lead agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance for MTCA remedial actions.
- 197-11-262 Determination of significance and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA remedial actions.
- 197-11-268 MTCA interim actions.
- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.
- 197-11-400 Purpose of EIS.
- 197-11-402 General requirements.
- 197-11-405 EIS types.
- 197-11-406 EIS timing.
- 197-11-408 Scoping.
- 197-11-410 Expanded scoping.
- 197-11-420 EIS preparation.
- 197-11-425 Style and size.
- 197-11-430 Format.
- 197-11-435 Cover letter or memo.
- 197-11-440 EIS contents.
- 197-11-442 Contents of EIS on nonproject proposals.
- 197-11-443 EIS contents when prior nonproject EIS.
- 197-11-444 Elements of the environment.
- 197-11-448 Relationship of EIS to other considerations.
- 197-11-450 Cost-benefit analysis.
- 197-11-455 Issuance of DEIS.
- 197-11-460 Issuance of FEIS.
- 197-11-500 Purpose of this part.
- 197-11-502 Inviting comment.
- 197-11-504 Availability and cost of environmental documents.
- 197-11-508 SEPA register.
- 197-11-510 Public notice.
- 197-11-535 Public hearings and meetings.
- 197-11-545 Effect of no comment.
- 197-11-550 Specificity of comments.
- 197-11-560 FEIS response to comments.
- 197-11-570 Consulted agency costs to assist lead agency.
- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement—Procedures.
- 197-11-625 Addenda—Procedures.
- 197-11-630 Adoption—Procedures.
- 197-11-635 Incorporation by reference—Procedures.
- 197-11-640 Combining documents.
- 197-11-650 Purpose of this part.
- 197-11-655 Implementation.
- 197-11-660 Substantive authority and mitigation.
- 197-11-680 Appeals.
- 197-11-700 Definitions.
- 197-11-702 Act.
- 197-11-704 Action.
- 197-11-706 Addendum.
- 197-11-708 Adoption.
- 197-11-710 Affected tribe.
- 197-11-712 Affecting.
- 197-11-714 Agency.
- 197-11-716 Applicant.
- 197-11-718 Built environment.
- 197-11-720 Categorical exemption.
- 197-11-722 Consolidated appeal.
- 197-11-724 Consulted agency.
- 197-11-726 Cost-benefit analysis.
- 197-11-728 County/city.
- 197-11-730 Decision maker.
- 197-11-732 Department.
- 197-11-734 Determination of nonsignificance (DNS).
- 197-11-736 Determination of significance (DS).
- 197-11-738 EIS.
- 197-11-740 Environment.
- 197-11-744 Environmental document.
- 197-11-746 Environmental review.
- 197-11-750 Expanded scoping.
- 197-11-752 Impacts.
- 197-11-754 Incorporation by reference.
- 197-11-756 Lands covered by water.
- 197-11-758 Lead agency.
- 197-11-760 License.
- 197-11-762 Local agency.
- 197-11-764 Major action.
- 197-11-766 Mitigated DNS.
- 197-11-768 Mitigation.
- 197-11-770 Natural environment.
- 197-11-772 NEPA.
- 197-11-774 Nonproject.
- 197-11-776 Phased review.
- 197-11-778 Preparation.
- 197-11-780 Private project.
- 197-11-782 Probable.

- 197-11-784 Proposal.
- 197-11-786 Reasonable alternative.
- 197-11-788 Responsible official.
- 197-11-790 SEPA.
- 197-11-792 Scope.
- 197-11-793 Scoping.
- 197-11-794 Significant.
- 197-11-796 State agency.
- 197-11-797 Threshold determination.
- 197-11-799 Underlying governmental action.
- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.
- 197-11-900 Purpose of this part.
- 197-11-902 Agency SEPA policies.
- 197-11-916 Application to ongoing actions.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.
- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of nonsignificance (DNS).
- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

WSR 13-17-119
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
 [Filed August 21, 2013, 11:40 a.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 3.11 (Civil Penalties) and 3.25 (Federal Regulation Reference Date).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 26, 2013, at 8:45 a.m.

Date of Intended Adoption: September 26, 2013.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@psccleanair.org, fax (206) 343-7522, by September 25, 2013.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 19, 2013, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Section 3.11** - The agency's practice for many years has been to adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70.94.431 and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The CPI for the Seattle/Tacoma/Bremerton area increased by 1.4 percent for the 2012 calendar year, which amounts to an increase of \$246 in the maximum civil penalty amount.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

Section 3.25 - This section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2012. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2013. Note: This action is also intended to support the delegation request for 40 C.F.R. 63, Subpart DDDDD, as explained in the board memo dated July 18, 2013 (see attached [no further information supplied by agency]).

Reasons Supporting Proposal: There are no benefits or costs associated with the proposed amendments.

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: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; 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.

August 21, 2013
Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$((~~17,279.00~~)) 17,525.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$((~~17,279.00~~)) 17,525.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed

with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

REGULATION I, SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, (~~2012~~) 2013.

WSR 13-17-120

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed August 21, 2013, 11:40 a.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, Section 6.03 (Notice of Construction).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 26, 2013, at 8:45 a.m.

Date of Intended Adoption: September 26, 2013.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seat-

tle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by September 25, 2013.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 19, 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 proposal requires thermal cutting of stainless steel (defined as an alloy with a minimum chromium content of 10.5 percent, by weight) installed after November 1, 2013, to be subject to NOC review. The proposal exempts thermal cutting of metal alloys that are not classified as stainless steel. It also exempts thermal cutting of any metal (including stainless) if it is incidental to plant maintenance activities.

The installation date included in the amendment for thermal cutting of stainless steel clarifies that this amendment does not apply retroactively to operations established prior to this date. The date is the assumed effective date of this amendment, if approved.

Reasons Supporting Proposal: The overall benefit of these proposed amendments is that the agency will be focusing its NOC review resources more accurately on the cutting activity that can lead to adverse environmental impacts – specifically the potential hexavalent chromium emission from thermal cutting of stainless steel. Hexavalent chromium is a toxic air contaminant that is a known carcinogen with very low concentrations producing adverse health impacts.

Another benefit is that this may reduce the number of NOC applications we process where the environmental benefits derived are limited (e.g. permit applications for plasma cutting operations which cut no stainless steel). The exemption amendment could mean that a source that is considering installation of a thermal cutting operation with a currently exempt technology (e.g. oxy-fuel or laser) would in the future be required to obtain an NOC approval if stainless steel were their work objective. Our research suggests it is unlikely anyone is cutting stainless steel with an oxy-fuel technology and the laser applications to stainless would be limited. Overall, there is no anticipated cost increases associated with this proposal. By narrowing the focus to stainless steel and excluding plant maintenance cutting, there may be a slight reduction in the collective costs to businesses in our jurisdiction, though it is not quantified.

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: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; 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.

August 21, 2013
Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 6.03 NOTICE OF CONSTRUCTION

(a) It shall be unlawful for any person to cause or allow the establishment of a new source, or the replacement or substantial alteration of control equipment installed on an existing source, unless a "Notice of Construction application" has been filed and an "Order of Approval" has been issued by the Agency. The exemptions in Sections 6.03 (b) and (c) of this regulation shall not apply to:

(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Subpart AAA (New Residential Wood Heaters), Subpart BB (Kraft Pulp Mills), Subpart S (Primary Aluminum Reduction Plants), Subpart OOO (Nonmetallic Mineral Processing Plants), and Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines; and for relocation of affected facilities under Subpart I (Hot Mix Asphalt Facilities) for which an Order of Approval has been previously issued by the Agency;

(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for Subpart B (Radon from Underground Uranium Mines), Subpart H (Emissions of Radionuclides other than Radon from Department of Energy Facilities), Subpart I (Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H), Subpart K (Radionuclides from Elemental Phosphorus Plants), Subpart Q (Radon from Department of Energy Facilities), Subpart R (Radon from Phosphogypsum Stacks), Subpart T (Radon from Disposal of Uranium Mill Tailings), Subpart W (Radon from Operating Mill Tailings), and for demolition and renovation projects subject to Subpart M (Asbestos);

(3) Any project that qualifies as a new source as defined under 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except for the provisions of Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, Subpart LL (Primary Aluminum Reduction Plants), the provisions of Subpart S (Pulp and Paper Industry) and Subpart MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills) pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ (Reciprocating Internal Combustion Engines) pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart DDDDD (Industrial, Commercial, and Institutional Boilers and Process Heaters), Subpart WWWW (Hospitals: Ethylene Oxide Sterilizers), Subpart

CCCCC (Gasoline Dispensing Facilities), Subpart HHH-HHH (Paint Stripping and Miscellaneous Surface Coating Operations), Subpart WWWW (Plating and Polishing Operations), Subpart XXXXXX (Nine Metal Fabrication and Finishing Source Categories), Subpart YYYYYY (Ferroalloys Production Facilities), and Subpart ZZZZZZ (Aluminum, Copper, and Other Nonferrous Foundries);

(4) Any new major stationary source or major modification as defined under WAC 173-400-030; and

(5) Any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation.

(b) **Notifications.** A Notice of Construction application and Order of Approval are not required for the new sources identified in this section, provided that a complete notification is filed with the Agency. It shall be unlawful for any person to cause or allow establishment of a new source identified in this section unless a complete notification has been filed with the Agency:

Liquid Storage and Transfer

(1) Storage tanks used exclusively for:

(A) Gasoline dispensing and having a rated capacity of $\geq 1,001$ gallons, PROVIDED THAT they are installed in accordance with the current California Air Resources Board Executive Orders;

(B) Organic liquids with a true vapor pressure of 2.2-4.0 psia and having a rated capacity of 20,000-39,999 gallons; or

(C) Organic liquids with a true vapor pressure of 0.5-0.75 psia and having a rated capacity $\geq 40,000$ gallons.

(2) Loading and unloading equipment used exclusively for the storage tanks exempted above, including gasoline dispensers at gasoline stations.

Relocation of Portable Batch Plants

(3) Relocation of the following portable facilities: asphalt batch plants, nonmetallic mineral processing plants, and concrete batch plants for which an Order of Approval has been previously issued by the Agency. *All the conditions in the previously issued Order of Approval remain in effect.*

Dry Cleaning

(4) Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers to recover the cleaning solvent.

Printing

(5) Non-heatset, web offset presses and wholesale, sheet-fed offset presses (lithographic or letterpress) using exclusively soy-based or kerosene-like oil-based inks, fountain solutions with $\leq 6\%$ VOC by volume or $\leq 8.5\%$ if refrigerated to $< 60^\circ\text{F}$, and cleaning solvents with a vapor pressure $\leq 25\text{mm Hg}$ or a VOC content $\leq 30\%$ by volume.

Water Treatment

(6) Industrial and commercial wastewater evaporators (except flame impingement) used exclusively for wastewater generated on-site that meets all discharge limits for disposal into the local municipal sewer system (including metals, cyanide, fats/oils/grease, pH, flammable or explosive materials, organic compounds, hydrogen sulfide, solids, and food

waste). *A letter from the local sewer district documenting compliance is required in order to use this exemption.*

Sanding Equipment

(7) Sanding equipment controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of $< 3.5:1$ (for reverse-air or manual cleaning) or $< 12:1$ (for pulse-jet cleaning).

Ventilation and Control Equipment

(8) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of $< 3.5:1$ (for mechanical or manual cleaning) or $< 12:1$ (for pulse-jet cleaning).

(9) Replacement of an existing paint spray booth that has previously received an Order of Approval, with like kind equipment and for spray coating operations that continue to operate consistent with the previously issued Order of Approval. *All the conditions in the previously issued Order of Approval remain in effect.*

Miscellaneous

(10) Any source not otherwise exempt under Section 6.03(c) of this regulation that has been determined through review of a Notice of Construction application by the Control Officer not to warrant an Order of Approval because it has a de minimis impact on air quality and does not pose a threat to human health or the environment.

Coffee Roasters

(11) Batch coffee roasters with a maximum rated capacity of 10 lbs per batch or less.

(c) **Exemptions.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that sufficient records are kept to document the exemption:

Combustion

(1) Fuel-burning equipment (except when combusting pollutants generated by a non-exempt source) having a rated capacity:

(A) < 10 million Btu per hour heat input burning exclusively distillate fuel oil, natural gas, propane, butane, biodiesel that meets ASTM D 6751 specifications (or any combination thereof);

(B) < 0.5 million Btu per hour heat output burning waste-derived fuel (including fuel oil not meeting the specifications in Section 9.08 of this regulation); or

(C) < 1 million Btu per hour heat input burning any other fuel.

(2) All stationary gas turbines with a rated heat input < 10 million Btu per hour.

(3) Stationary internal combustion engines having a rated capacity:

(A) < 50 horsepower output;

(B) Used solely for instructional purposes at research, teaching, or educational facilities; or

(C) Portable or standby units operated < 500 hours per year, PROVIDED THAT they are not operated at a facility with a power supply contract that offers a lower rate in exchange

for the power supplier's ability to curtail energy consumption with prior notice.

(4) Relocation of portable, stationary internal combustion engines or gas turbines for which an Order of Approval has been previously issued by the Agency.

(5) All nonroad compression ignition engines subject to 40 CFR Part 89 and land-based nonroad compression engines subject to 40 CFR Part 1039.

Metallurgy

(6) Crucible furnaces, pot furnaces, or induction furnaces with a capacity $\leq 1,000$ pounds, PROVIDED THAT no sweating or distilling is conducted, and PROVIDED THAT only precious metals, or an alloy containing $>50\%$ aluminum, magnesium, tin, zinc, or copper is melted.

(7) Crucible furnaces or pot furnaces with a capacity ≤ 450 cubic inches of any molten metal.

(8) Ladles used in pouring molten metals.

(9) Foundry sand-mold forming equipment.

(10) Shell core and shell-mold manufacturing machines.

(11) Molds used for the casting of metals.

(12) Die casting machines with a rated capacity $\leq 1,000$ pounds that are not used for copper alloys.

(13) Equipment used for heating metals immediately prior to forging, pressing, rolling, or drawing, if any combustion equipment is also exempt.

(14) Forming equipment used exclusively for forging, rolling, or drawing of metals, if any combustion equipment is also exempt.

(15) Heat treatment equipment used exclusively for metals, if any combustion equipment is also exempt.

(16) Equipment used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, siliconizing, or diffusion treating of metals, if any combustion equipment is also exempt.

(17) Atmosphere generators used in connection with metal heat-treating processes.

(18) Sintering equipment used exclusively for metals other than lead, PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

(19) Welding equipment and ~~((oxygen/gaseous fuel cutting equipment))~~ thermal cutting of metals other than stainless steel. Exceptions or specific conditions that apply to these exemptions are identified as follows:

(A) Thermal cutting of stainless steel (defined as an alloy with a minimum chromium content of 10.5%, by weight) installed after November 1, 2013 shall not be exempt;

(B) Thermal cutting of stainless steel performed solely for plant maintenance activities shall be exempt;

(C) Thermal cutting of stainless steel refers to all thermal cutting technologies, including but not limited to, plasma arc, air carbon arc, laser, powder torch, and oxy-fuel technologies.

(20) Soldering or brazing, or equipment, including brazing ovens.

(21) Equipment used exclusively for surface preparation, passivation, deoxidation, and/or stripping that meets all of the following tank content criteria:

(A) ≤ 50 grams of VOC per liter;

(B) No acids other than boric, formic, acetic, phosphoric, sulfuric, or $\leq 12\%$ hydrochloric; and

(C) May contain alkaline oxidizing agents, hydrogen peroxide, salt solutions, sodium hydroxide, and water in any concentration.

Associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment are also exempt. (This exemption does not include anodizing, hard anodizing, chemical milling, circuit board etching using ammonia-based etchant, electrocleaning, or the stripping of chromium, except sulfuric acid and/or boric acid anodizing with a total bath concentration of $\leq 20\%$ by weight and using $\leq 10,000$ amp-hours per day, or phosphoric acid anodizing with a bath concentration of $\leq 15\%$ by weight of phosphoric acid and using $\leq 20,000$ amp-hours per day.)

(22) Equipment used exclusively for electrolytic plating (except the use of chromic and/or hydrochloric acid) or electrolytic stripping (except the use of chromic, hydrochloric, nitric, or sulfuric acid) of brass, bronze, copper, iron, tin, zinc, precious metals, and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment. Also, equipment used to electrolytically recover metals from spent or pretreated plating solutions that qualify for this exemption.

Ceramics and Glass

(23) Kilns used for firing ceramic-ware or artwork, if any combustion equipment is also exempt.

(24) Porcelain enameling furnaces, porcelain enameling drying ovens, vitreous enameling furnaces, or vitreous enameling drying ovens, if any combustion equipment is also exempt.

(25) Hand glass melting furnaces, electric furnaces, and pot furnaces with a capacity $\leq 1,000$ pounds of glass.

(26) Heat-treatment equipment used exclusively for glass, if any combustion equipment is also exempt.

(27) Sintering equipment used exclusively for glass PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

Plastics and Rubber and Composites

(28) Equipment used exclusively for conveying and storing plastic pellets.

(29) Extrusion equipment used exclusively for extruding rubber or plastics where no organic plasticizer is present, or for pelletizing polystyrene foam scrap.

(30) Equipment used for extrusion, compression molding, and injection molding of plastics, PROVIDED THAT the VOC content of all mold release products or lubricants is $\leq 1\%$ by weight.

(31) Injection or blow-molding equipment for rubber or plastics, PROVIDED THAT no blowing agent other than compressed air, water, or carbon dioxide is used.

(32) Presses or molds used for curing, post-curing, or forming composite products and plastic products, PROVIDED THAT the blowing agent contains no VOC or chlorinated compounds.

(33) Presses or molds used for curing or forming rubber products and composite rubber products with a ram diameter ≤ 26 inches, PROVIDED THAT it is operated at $\leq 400^\circ\text{F}$.

(34) Ovens used exclusively for the curing or forming of plastics or composite products, where no foam-forming or

expanding process is involved, if any combustion equipment is also exempt.

(35) Ovens used exclusively for the curing of vinyl plastisols by the closed-mold curing process, if any combustion equipment is also exempt.

(36) Equipment used exclusively for softening or annealing plastics, if any combustion equipment is also exempt.

(37) Hot wire cutting of expanded polystyrene foam and woven polyester film.

(38) Mixers, roll mills, and calenders for rubber or plastics where no material in powder form is added and no organic solvents, diluents, or thinners are used.

Material Working and Handling

(39) Equipment used for mechanical buffing (except tire buffers), polishing, carving, cutting, drilling, grinding, machining, planing, pressing, routing, sawing, stamping, or turning of wood, ceramic artwork, ceramic precision parts, leather, metals, plastics, rubber, fiberboard, masonry, glass, silicon, semiconductor wafers, carbon, graphite, or composites. ~~((This exemption also applies to laser cutting, drilling, and machining of metals.))~~

(40) Hand-held sanding equipment.

(41) Sanding equipment controlled by a fabric filter with an airflow of <2,000 cfm.

(42) Equipment used exclusively for shredding of wood (e.g., tub grinders, hammermills, hoppers), or for extruding, pressing, handling, or storage of wood chips, sawdust, or wood shavings.

(43) Paper shredding and associated conveying systems and baling equipment.

(44) Hammermills used exclusively to process aluminum and/or tin cans.

(45) Tumblers used for the cleaning or deburring of metal products without abrasive blasting.

Abrasive Blasting

(46) Portable abrasive blasting equipment used at a temporary location to clean bridges, water towers, buildings, or similar structures, PROVIDED THAT any blasting with sand (or silica) is performed with $\geq 66\%$ by volume water.

(47) Portable vacuum blasting equipment using steel shot and vented to a fabric filter.

(48) Hydroblasting equipment using exclusively water as the abrasive.

(49) Abrasive blasting cabinets vented to a fabric filter, PROVIDED THAT the total internal volume of the cabinet is ≤ 100 cubic feet.

(50) Shot peening operations, PROVIDED THAT no surface material is removed.

Cleaning

(51) Solvent cleaning:

(A) Non-refillable, hand-held aerosol spray cans of solvent; or

(B) Closed-loop solvent recovery systems with refrigerated or water-cooled condensers used for recovery of waste solvent generated on-site.

(52) Steam-cleaning equipment.

(53) Unheated liquid solvent tanks used for cleaning or drying parts:

(A) With a solvent capacity ≤ 10 gallons and containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(B) Using a solvent with a true vapor pressure ≤ 0.6 psi containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloro-ethylene, or any combination thereof;

(C) With a remote reservoir and using a solvent containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof; or

(D) With a solvent capacity ≤ 2 gallons; or

(E) Using solutions with a Volatile Organic Compound (VOC) content of $\leq 1\%$ by weight and no identified Hazardous Air Pollutant (HAP), and are heated below the boiling point of the solution.

(54) Hand-wipe cleaning.

Coating, Resin, and Adhesive Application

(55) Powder-coating equipment.

(56) Portable coating equipment and pavement stripers used exclusively for the field application of architectural coatings and industrial maintenance coatings to stationary structures and their appurtenances or to pavements and curbs.

(57) High-volume low-pressure (HVLP) spray-coating equipment having a cup capacity ≤ 8 fluid ounces, PROVIDED THAT it is not used to coat > 9 square feet per day and is not used to coat motor vehicles or aerospace components.

(58) Airbrushes having a cup capacity ≤ 2 fluid ounces and an airflow of 0.5-2.0 cfm.

(59) Hand-held aerosol spray cans having a capacity of ≤ 1 quart of coating and hand-held brush and rollers for coating application.

(60) Spray-coating equipment used exclusively for application of automotive undercoating or bed liner materials with a flash point $> 100^\circ\text{F}$.

(61) Ovens associated with an exempt coating operation, if any combustion equipment is also exempt.

(62) Ovens associated with a coating operation that are used exclusively to accelerate evaporation, if any combustion equipment is also exempt. (Note: The coating operation is not necessarily exempt.)

(63) Radiation-curing equipment using ultraviolet or electron beam energy to initiate a chemical reaction forming a polymer network in a coating.

(64) Hand lay, brush, and roll-up resins equipment and operations.

(65) Equipment used exclusively for melting or applying of waxes or natural and synthetic resins.

(66) Hot-melt adhesive equipment.

(67) Any adhesive application equipment that exclusively uses materials containing $< 1\%$ VOC by weight and $< 0.1\%$ HAP.

(68) Equipment used exclusively for bonding of linings to brake shoes, where no organic solvents are used.

Printing

(69) Retail, sheet-fed, non-heatset offset presses (lithographic or letter-press).

(70) Presses using exclusively UV-curable inks.

(71) Presses using exclusively plastisols.

(72) Presses using exclusively water-based inks (<1.5 lbs VOC per gallon, excluding water, or <10% VOC by volume) and cleaning solvents without VOC.

(73) Presses used exclusively for making proofs.

(74) Electrostatic, ink jet, laser jet, and thermal printing equipment.

(75) Ovens used exclusively for exempt printing presses, if any combustion equipment is also exempt.

Photography

(76) Photographic process equipment by which an image is reproduced upon material sensitized by radiant energy, excluding equipment using perchloroethylene.

Liquid Storage and Transfer

(77) Storage tanks permanently attached to a motor vehicle.

(78) Storage tanks used exclusively for:

(A) Liquefied gases, including any tanks designed to operate in excess of 29.7 psia without emissions;

(B) Asphalt at a facility other than an asphalt roofing plant, asphalt processing plant, hot mix asphalt plants, or petroleum refinery;

(C) Any liquids (other than asphalt) that also have a rated capacity $\leq 1,000$ gallons;

(D) Organic liquids (other than gasoline or asphalt) that also have a rated capacity <20,000 gallons;

(E) Organic liquids (other than asphalt) with a true vapor pressure <2.2 psia (e.g., ASTM spec. fuel oils and lubricating oils) that also have a rated capacity <40,000 gallons;

(F) Organic liquids (other than asphalt) with a true vapor pressure <0.5 psia that also have a rated capacity $\geq 40,000$ gallons;

(G) Sulfuric acid or phosphoric acid with an acid strength $\leq 99\%$ by weight;

(H) Nitric acid with an acid strength $\leq 70\%$ by weight;

(I) Hydrochloric acid or hydrofluoric acid tanks with an acid strength $\leq 30\%$ by weight;

(J) Aqueous solutions of sodium hydroxide, sodium hypochlorite, or salts, PROVIDED THAT the surface of the solution contains $\leq 1\%$ VOC by weight;

(K) Liquid soaps, liquid detergents, vegetable oils, fatty acids, fatty esters, fatty alcohols, waxes, and wax emulsions;

(L) Tallow or edible animal fats intended for human consumption and of sufficient quality to be certifiable for United States markets;

(M) Water emulsion intermediates and products, including latex, with a VOC content $\leq 5\%$ by volume or a VOC composite partial pressure of ≤ 0.1 psi at 68°F; or

(N) Wine, beer, or other alcoholic beverages.

(79) Loading and unloading equipment used exclusively for the storage tanks exempted above.

(80) Loading and unloading equipment used exclusively for transferring liquids or compressed gases into containers having a rated capacity <60 gallons, except equipment transferring >1,000 gallons per day of liquid with a true vapor pressure >0.5 psia.

(81) Equipment used exclusively for the packaging of sodium hypochlorite-based household cleaning or pool products.

Mixing

(82) Mixing equipment, PROVIDED THAT no material in powder form is added and the mixture contains <1% VOC by weight.

(83) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.

(84) Equipment used exclusively for the manufacture of water emulsions of waxes, greases, or oils.

(85) Equipment used exclusively for the mixing and packaging of lubricants or greases.

(86) Equipment used exclusively for manufacturing soap or detergent bars, including mixing tanks, roll mills, plodders, cutters, wrappers, where no heating, drying, or chemical reactions occur.

(87) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form, PROVIDED THAT the solution contains <1% VOC by weight.

(88) Batch mixers with a rated working capacity ≤ 55 gallons.

(89) Batch mixers used exclusively for paints, varnishes, lacquers, enamels, shellacs, printing inks, or sealers, PROVIDED THAT the mixer is equipped with a lid that contacts $\geq 90\%$ of the rim.

Water Treatment

(90) Oil/water separators, except those at petroleum refineries.

(91) Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for evaporative cooling of water from barometric jets or from barometric condensers, and in which no chromium compounds are contained.

(92) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(93) Municipal sewer systems, including wastewater treatment plants and lagoons, PROVIDED THAT they do not use anaerobic digesters or chlorine sterilization. This exemption does not include sewage sludge incinerators.

(94) Soil and groundwater remediation projects involving <15 pounds per year of benzene or vinyl chloride, <500 pounds per year of perchloroethylene, and <1,000 pounds per year of toxic air contaminants.

Landfills and Composting

(95) Passive aeration of soil, PROVIDED THAT the soil is not being used as a cover material at a landfill.

(96) Closed landfills that do not have an operating, active landfill gas collection system.

(97) Non-commercial composting.

Agriculture, Food, and Drugs

(98) Equipment used in agricultural operations, in the growing of crops, or the raising of fowl or animals.

(99) Insecticide, pesticide, or fertilizer spray equipment.

(100) Equipment used in retail establishments to dry, cook, fry, bake, or grill food for human consumption, including charbroilers, smokehouses, barbecue units, deep fat fryers, cocoa and nut roasters, but not including coffee roasters.

(101) Cooking kettles (other than deep frying equipment) and confection cookers where all the product in the kettle is edible and intended for human consumption.

(102) Bakery ovens with a total production of yeast leavened bread products <10,000 pounds per operating day, if any combustion equipment is also exempt.

(103) Equipment used to dry, mill, grind, blend, or package <1,000 tons per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch.

(104) Equipment used to convey, transfer, clean, or separate <1,000 tons per year of dry food products or waste from food production operations.

(105) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere, or that handle <1,000 tons per year.

(106) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices, coffee, flavor, fragrance extraction, dried flowers, or spices, PROVIDED THAT no organic solvents are used in the process.

(107) Equipment used to convey or process materials in bakeries or used to produce noodles, macaroni, pasta, food mixes, and drink mixes where products are edible and intended for human consumption, PROVIDED THAT no organic solvents are used in the process. This exemption does not include storage bins located outside buildings.

(108) Brewing operations at facilities producing <3 million gallons per year of beer.

(109) Fermentation tanks for wine (excluding tanks used for the commercial production of yeast for sale).

(110) Equipment used exclusively for tableting, or coating vitamins, herbs, or dietary supplements, PROVIDED THAT no organic solvents are used in the process.

(111) Equipment used exclusively for tableting or packaging pharmaceuticals and cosmetics, or coating pharmaceutical tablets, PROVIDED THAT no organic solvents are used.

Quarries, Nonmetallic Mineral Processing Plants, and Concrete and Asphalt Batch Plants

(112) Portable nonmetallic mineral processing plants.

(113) Fixed nonmetallic mineral processing plants.

(114) (Reserved).

(115) Mixers and other ancillary equipment at concrete batch plants (or aggregate product production facilities) with a rated capacity <15 cubic yards per hour.

(116) Concrete mixers with a rated working capacity of ≤1 cubic yard.

(117) Drilling or blasting (explosives detonation).

(118) Asphaltic concrete crushing/recycling equipment with a throughput <5,000 tons per year.

Construction

(119) Asphalt paving application.

(120) Asphalt (hot-tar) roofing application.

(121) Building construction or demolition, except that notification of demolitions is required under Section 4.03 of Regulation III.

Ventilation and Control Equipment

(122) Comfort air-conditioning systems, or ventilating systems (forced or natural draft), PROVIDED THAT they are not designed or used to control air contaminants generated by, or released from, sources subject to Notice of Construction.

(123) Refrigeration units, except those used as, or in conjunction with, air pollution control equipment.

(124) Refrigerant recovery and/or recycling units, excluding refrigerant reclaiming facilities.

(125) Emergency ventilation systems used exclusively to contain and control emissions resulting from the failure of a compressed gas storage system.

(126) Emergency ventilation systems used exclusively to scrub ammonia from refrigeration systems during process upsets or equipment breakdowns.

(127) Negative air machines equipped with HEPA filters used to control asbestos emissions from demolition/renovation activities.

(128) Portable control equipment used exclusively for storage tank degassing.

(129) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow <2,000 cfm.

(130) Control equipment used exclusively for sources that are exempt from Notice of Construction under Section 6.03(c) of this regulation.

(131) Routine maintenance, repair, or similar parts replacement of control equipment.

Testing and Research

(132) Laboratory testing and quality assurance/control testing equipment used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in achieving the purpose of the analysis, test, or teaching activity. Non-production bench scale research equipment is also included.

Miscellaneous

(133) Single-family and duplex dwellings.

(134) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment, if any combustion equipment used to power such equipment is also exempt.

(135) Equipment, including dryers, used exclusively for dyeing, stripping, or bleaching of textiles where no organic solvents, diluents, or thinners are used, if any combustion equipment used to power such equipment is also exempt.

(136) Chemical vapor sterilization equipment where no ethylene oxide is used, and with a chamber volume of ≤2 cubic feet used by healthcare facilities.

(137) Ozone generators that produce <1 pound per day of ozone.

(138) Fire extinguishing equipment.

(d) Each Notice of Construction application and Section 6.03(b) notification shall be submitted on forms provided by the Agency and shall be accompanied by the appropriate fee as required by Section 6.04 of this regulation. Notice of Construction applications shall also include any additional information required to demonstrate that the requirements of this Article are met. Notice of Construction applications shall also include an environmental checklist or other documents demonstrating compliance with the State Environmental Policy Act.

WSR 13-17-121
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
[Filed August 21, 2013, 11:40 a.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, Section 7.07 (Operating Permit Fees).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 26, 2013, at 8:45 a.m.

Date of Intended Adoption: September 26, 2013.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by September 25, 2013.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 19, 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 North American Industry Classification System (NAICS) coding system is published by the United States Department of Commerce to support the collection and sorting of economic data. The agency has used this classification system in its compliance database to help identify the general nature of a registered source's activity. This simplified identification system helps the agency sort source categories into common groups of data for analysis and comparison. In one specific circumstance, we use these NAICS codes in our regulations to distinguish between the three base fee categories for sources as it relates to annual operating permit sources. These three categories have been created to characterize the complexity of permit administration work associated with a source type.

The NAICS codes are updated on a five-year cycle by the department of commerce. The latest change in NAICS codes, published in 2012, produced a couple of changes that affect the codes shown in Regulation I, Section 7.07. The agency has an interest in updating all the codes in our database. To do so, it is necessary to update the codes shown in the fee rule to be consistent for all sources. No fee changes are associated with this technical amendment.

Reasons Supporting Proposal: There are no benefits or costs associated with the proposed amendments.

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: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; 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.

August 21, 2013
Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 7.07 OPERATING PERMIT FEES

(a) The Agency shall assess annual operating permit fees as set forth in Section 7.07(b) below to cover the cost of administering the operating permit program.

(b) Upon assessment by the Agency, the following annual operating permit fees are due and payable within 45 days of the invoice date. They shall be deemed delinquent if not fully paid within 90 days of the date of the invoice and will be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$6,500. In addition, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than 90 days late with such payments may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter 70.94 RCW).

(1) Sources in the following North American Industry Classification System (NAICS) codes (North American Industry Classification System Manual, U.S. Executive Office of the President, Office of Management and Budget, 1997), or sources subsequently determined by the control officer to be assigned to either Section 7.07 (b)(1)(i) or 7.07 (b)(1)(ii) shall be subject to the following facility fees:

(i) Operating permit sources with the following NAICS codes:

Table with 2 columns: NAICS, NAICS Description Fee. Rows include 221112 Fossil Fuel Electric Power Generation, 324110 Petroleum Refineries, 327213 Glass Container Manufacturing, 327310 Cement Manufacturing, 331110 Iron and Steel Mills and Ferroalloy Manufacturing, 336411 Aircraft Manufacturing, 336413 Other Aircraft Parts and Auxiliary Equipment Manufacturing, 928110 National Security, and a total fee of \$57,200.

(ii) Operating permit sources with the following NAICS codes:

Table with 2 columns: NAICS, NAICS Description Fee. Row includes 311119 Other Animal Food Manufacturing.

NAICS	NAICS Description Fee
311812	Commercial Bakeries
321912	Cut Stock, Resawing Lumber, and Planing
321918	Other Millwork (including Flooring)
321999	All Other Miscellaneous Wood Product Manufacturing
322220	Paper Bag and Coated and Treated Paper
(322222)	Manufacturing ((Coated and Laminated Paper Manufacturing))
326140	Polystyrene Foam Product Manufacturing
327121	Brick and Structural Clay Tile Manufacturing
332996	Fabricated Pipe and Pipe Fitting Manufacturing
 \$14,300

(iii) Operating permit sources with NAICS codes other than listed above. \$28,600

(2) Additional emission rate fees shall be paid in addition to the annual operating permit fees of Section 7.07 (b)(1):

\$30 for each ton of CO reported in the previous calendar year, and

\$60 for each ton of NOx reported in the previous calendar year, and

\$60 for each ton of PM10 reported in the previous calendar year, and

\$60 for each ton of SOx reported in the previous calendar year, and

\$60 for each ton of VOC reported in the previous calendar year, and

\$60 for each ton of HAP reported in the previous calendar year.

(c) In addition to the fees under Sections 7.07 (b)(1) and (b)(2) above, the Agency shall, on a source-by-source basis, assess the following fees:

(1) \$500 for administrative permit amendments [WAC 173-401-720], and

(2) for minor permit modifications [WAC 173-401-725 (2) and (3)], a fee equal to 10% of the annual operating permit fee, not to exceed \$6,500, and

(3) for the original issuance [WAC 173-401-700], significant modification [WAC 173-401-725(4)], reopening for cause [WAC 173-401-730], or renewal [WAC 173-401-710] of an operating permit, a fee equal to 20% of the annual operating permit fee, not to exceed \$13,000, and

(4) to cover the costs of public involvement under WAC 173-401-800, and

(5) to cover the costs incurred by the Washington State Department of Health in enforcing 40 CFR Part 61, Subpart I and chapter 246-247 WAC.

(d) In addition to the fees described under Sections 7.07 (b) and (c) above, the Agency shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology under chapter 173-401 WAC to cover the Department of Ecology's program development and oversight costs.

(e) Continued payment to the Agency of the annual operating permit fee maintains the operating permit and the status of the source as an operating facility.

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