

**WSR 14-01-007**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 [Filed December 4, 2013, 3:21 p.m.]

December 4, 2013  
 Jessica Todorovich  
 Deputy Secretary  
 for John Wiesman, DrPH, MPH  
 Secretary

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Radiation protection—Air emissions, WAC 246-247-030 Definitions, the department of health is proposing to amend the definition of "license" in response to a petition for rule making.

Hearing Location(s): Department of Health, Town Center Two, Room 145, 111 Israel Road S.E., Tumwater, WA 98501, on January 22, 2014, at 2:00 p.m.

Date of Intended Adoption: January 29, 2014.

Submit Written Comments to: Michelle K. Austin, P.O. Box 47827, Olympia, WA 98504-7827, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2266, by January 22, 2014.

Assistance for Persons with Disabilities: Contact Michelle K. Austin by January 15, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: For the purpose of clarity, the department of health is proposing to revise the definition of "license" to accurately reflect the department of health actions and to clarify related actions by the department of ecology and the local air pollution control authorities.

Reasons Supporting Proposal: The current definition of license describes it as either issued by the department of health or incorporated by the department of health as an applicable portion of the air operating permit. While the radioactive air emissions license is always issued by the department of health, incorporation of the license into the air operating permit is done by the department of ecology or the local air pollution control authorities under their authority.

Statutory Authority for Adoption: RCW 70.98.050 and 70.98.080.

Statute Being Implemented: RCW 70.98.050 and 70.98.080.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Martell, 309 Bradley Boulevard, Suite 201, Richland, WA 98352, (509) 946-3798.

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

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

AMENDATORY SECTION (Amending WSR 94-07-010, filed 3/4/94, effective 4/4/94)

**WAC 246-247-030 Definitions.** Terms used in this chapter have the definitions set forth below with reference to radioactive air emissions.

(1) "Abatement technology" means any mechanism, process or method that has the potential to reduce public exposure to radioactive air emissions. Abatement control features include automatic mechanisms and administrative controls used in the operation and control of abatement technology from entry of radionuclides into the ventilated vapor space to release to the environment.

(2) "Administrative control" means any policy or procedure that limits the emission of radionuclides.

(3) "ALARA" means as low as reasonably achievable making every reasonable effort to maintain exposures to radiation as far below the dose standards in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other socioeconomic considerations, and in relation to the utilization of nuclear energy, ionizing radiation, and radioactive materials in the public interest. See WAC 246-220-007.

(4) "As low as reasonably achievable control technology" (ALARACT) means the use of radionuclide emission control technology that achieves emission levels that are consistent with the philosophy of ALARA. ALARACT compliance is demonstrated by evaluating the existing control system and proposed nonsignificant modifications in relation to applicable technology standards and other control technologies operated successfully in similar applications. In no event shall application of ALARACT result in emissions of radionuclides that could cause exceedance of the applicable standards of WAC 246-247-040. See the definition of ALARA in this section. Note that ALARACT is equivalent to, but replaces, RACT in the May 7, 1986, version of chapter 173-480 WAC.

(5) "Annual possession quantity" means the sum of the quantity of a radionuclide on hand at the beginning of the calendar year and the quantity of that radionuclide received or produced during the calendar year.

(6) "Best available radionuclide control technology" (BARCT) means technology that will result in a radionuclide emission limitation based on the maximum degree of reduction for radionuclides from any proposed newly constructed or significantly modified emission units that the licensing authority determines is achievable on a case-by-case basis. A BARCT compliance demonstration must consider energy, environmental, and economic impacts, and other costs through examination of production processes, and available methods, systems, and techniques for the control of radionu-

clide emissions. A BARCT compliance demonstration is the conclusion of an evaluative process that results in the selection of the most effective control technology from all known feasible alternatives. In no event shall application of BARCT result in emissions of radionuclides that could exceed the applicable standards of WAC 246-247-040. Control technology that meets BARCT requirements also meets ALARACT requirements. See WAC 173-480-030 and 246-247-120.

(7) "Committed effective dose equivalent" (CEDE) means the sum of the products of absorbed dose from internally deposited radionuclides and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man over a fifty-year period.

(8) "Construction" means fabrication, erection, or installation of a new building, structure, plant, process, or operation within a facility that has the potential to emit airborne radionuclides. Construction includes activities of a permanent nature aimed at completion of the emission unit, such as pouring concrete, putting in a foundation, or installing utilities directly related to the emission unit. It does not include preliminary activities such as tests to determine site suitability, equipment procurement and storage, site clearing and grading, and the construction of ancillary buildings.

(9) "Decommissioning" means actions taken to reduce or eliminate the potential public health and safety impacts of a building, structure, or plant that has permanently ceased operations, including, but not limited to, actions such as decontamination, demolition, and disposition.

(10) "Emission unit" means any single location that emits or has the potential to emit airborne radioactive material. This may be a point source, nonpoint source, or source of fugitive emissions.

(11) "Facility" means all buildings, structures, plants, processes, and operations on one contiguous site under control of the same owner or operator.

(12) "Fugitive emissions" are radioactive air emissions which do not and could not reasonably pass through a stack, vent, or other functionally equivalent structure, and which are not feasible to directly measure and quantify.

(13) "Indication device" means any method or apparatus used to monitor, or to enable monitoring, the operation of abatement controls or the potential or actual radioactive air emissions.

(14) "License" means a radioactive air emissions license (~~(-either)~~) issued by the department (~~(or incorporated by the department as an applicable portion of an air operating permit issued by the department of ecology or a local air pollution control authority,)~~) with requirements and limitations listed therein (~~(to which the licensed or permitted party must comply)~~). Compliance with the license requirements (~~(shall be)~~) are determined and enforced by the department. The license will be incorporated as an applicable requirement in the air operating permit issued by the department of ecology or a local air pollution control authority when the department of ecology or a local air pollution control authority issues an air operating permit.

(15) "Maximally exposed individual" (MEI) means any member of the public (real or hypothetical) who abides or resides in an unrestricted area, and may receive the highest

TEDE from the emission unit(s) under consideration, taking into account all exposure pathways affected by the radioactive air emissions.

(16) "Modification" means any physical change in, or change in the method of operation of, an emission unit that could increase the amount of radioactive materials emitted or may result in the emission of any radionuclide not previously emitted. This definition includes the cleanup of land contaminated with radioactive material, the decommissioning of buildings, structures, or plants where radioactive contamination exists, and changes that will cause an increase in the emission unit's operating design capacity. This definition excludes routine maintenance, routine repair, replacement-in-kind, any increases in the production rate or hours of operation, provided the emission unit does not exceed the release quantities specified in the license application or the operating design capacity approved by the department, addition of abatement technology as long as it is not less environmentally beneficial than existing, approved controls, and changes that result in an increase in the quantity of emissions of an existing radionuclide that will be offset by an equal or greater decrease in the quantity of emissions of another radionuclide that is deemed at least as hazardous with regard to its TEDE to the MEI.

(17) "Monitoring" means the measurement of radioactive material released to the ambient air by means of an in-line radiation detector, and/or by the withdrawal of representative samples from the effluent stream. Ambient air measurements may be acceptable for nonpoint sources and fugitive emissions.

(18) "Nonpoint source" is a location at which radioactive air emissions originate from an area, such as contaminated ground above a near-surface waste disposal unit, whose extent may or may not be well-defined.

(19) "Notice of construction" (NOC) is an application submitted to the department by an applicant that contains information required by WAC 246-247-060 for proposed construction or modification of a registered emission unit(s), or for modification of an existing, unregistered emission unit(s).

(20) "Point source" is a discrete, well-defined location from which radioactive air emissions originate, such as a stack, vent, or other functionally equivalent structure.

(21) "Potential-to-emit" means the rate of release of radionuclides from an emission unit based on the actual or potential discharge of the effluent stream that would result if all abatement control equipment did not exist, but operations are otherwise normal. Determine the potential-to-emit by one of the following methods:

(a) Multiply the annual possession quantity of each radionuclide by the release fraction for that radionuclide, depending on its physical state. Use the following release fractions:

- (i) 1 for gases;
- (ii)  $10^{-3}$  for liquids or particulate solids; and
- (iii)  $10^{-6}$  for solids.

Determine the physical state for each radionuclide by considering its chemical form and the highest temperature to which it is subjected. Use a release fraction of one if the radionuclide is subjected to temperatures at or above its boiling

point; use a release fraction of  $10^{-3}$  if the radionuclide is subjected to temperatures at or above its melting point, but below its boiling point. If the chemical form is not known, use a release fraction of one for any radionuclide that is heated to a temperature of one hundred degrees Celsius or more, boils at a temperature of one hundred degrees Celsius or less, or is intentionally dispersed into the environment. Other release fractions may be used only with the department's approval; or

(b) Perform a back-calculation using measured emission rates and *in situ* measurements of the control equipment efficiencies, as approved by the department; or

(c) Measure the quantities of radionuclides captured in each control device, coupled with *in situ* measurements of the control equipment efficiencies, as approved by the department; or

(d) Sample the effluent upstream from all control devices, as approved by the department; or

(e) Use an alternative method approved by the department.

(22) "Replacement-in-kind" means the substitution of existing systems, equipment, components, or devices of an emission unit's control technology with systems, equipment, components, or devices with equivalent, or better, performance specifications that will perform the same function(s).

(23) "Routine" means:

(a) Maintenance, repair, or replacement-in-kind performed on systems, equipment, components, or devices of an emission unit's abatement technology as a planned part of an established inspection, maintenance, or quality assurance program that does not increase the emission unit's operating design capacity; or

(b) Normal, day-to-day operations of a facility.

(24) "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix, or radioactive material in airtight containers, designed to prevent release and dispersal of the radioactive material under the most severe conditions encountered in normal use and handling.

(25) "Significant" means the potential-to-emit airborne radioactivity at a rate that could increase the TEDE to the MEI by at least 1.0 mrem/yr as a result of a proposed modification.

(26) "Total effective dose equivalent" (TEDE) means the sum of the dose equivalent due to external exposures and the CEDE due to internal exposures.

(27) "Uranium fuel cycle" means the operations of milling uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity in a nuclear power plant that uses uranium fuel, and reprocessing of spent uranium fuel, to the extent that these operations solely support the production of electrical power for public use. Excluded are mining operations, waste disposal sites, transportation of any radioactive material, and the reuse of recovered nonuranium special nuclear and by-product materials from the cycle.

**WSR 14-01-017**  
**PROPOSED RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**  
 [Filed December 9, 2013, 6:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-21-065.

Title of Rule and Other Identifying Information: WAC 139-05-810 Basic training requirement for reserve officers.

Hearing Location(s): Washington State Criminal Justice Training Commission (WSCJTC), Room E-154, 19010 1st Avenue South, Burien, WA 98148, on June 11, 2014, at 10 a.m.

Date of Intended Adoption: June 11, 2014.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail [shirsch@cjtc.state.wa.us](mailto:shirsch@cjtc.state.wa.us), fax (206) 835-7928, by June 2, 2014.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, rules coordinator, by June 9, 2014, TTY (206) 835-7300 or (206) 835-7372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to WAC 139-05-810 will require agencies that hire a reserve officer to notify the WSCJTC of hire. The addition of this requirement will assist the WSCJTC in ensuring all reserve officers are receiving the required basic training.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Tisha Jones, Burien, Washington, (206) 835-7332; Implementation and Enforcement: Dave Bales, Burien, Washington, (206) 835-7289.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. The changes are not new, as they [are] simply mirroring the language of RCW 43.101.220.

December 9, 2013

Sonja Hirsch

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

**WAC 139-05-810 Basic training requirement for reserve officers.** (1) A peace officer whose certification, commission, and/or licensing has been revoked, sanctioned, suspended, or is under review by this state or any other state or territory is not eligible for a basic reserve law enforcement academy certificate, regardless of the officer's prior years of law enforcement service.

(2) For the purposes herein:

(a) "Reserve officer" includes any law enforcement officer who does not serve as a law enforcement officer of this

state on a full-time basis, but who, when called by such agency into active service, is fully commissioned on the same basis as full-time officers to enforce the criminal laws of this state; and

(b) "Field assignment" includes any period of active service wherein the assigned officer is expected to take routine and/or special enforcement actions, independently or otherwise, in the same manner and capacity as a full-time officer with such assignment.

~~((2))~~ (3) For the purposes of the Washington Mutual Aid Peace Officers Powers Act, chapter 10.93 RCW, every individual who is commissioned as a specially commissioned reserve peace officer in this state will obtain a basic reserve certificate as a precondition of the exercise of authority pursuant to such act ~~(; provided that, any individual possessing a basic reserve certificate issued by the commission prior to January 1, 1989, will be deemed to have met this requirement.~~

~~(3) Upon approval of an applicant's eligibility to participate in the reserve process, the applicant's employing agency must submit to the commission all requested records, information and proof of background check as a precondition of participation within such process.~~

~~(4) Each applicant that has been offered a conditional offer of employment as a reserve officer must take and successfully pass a psychological and a polygraph test or similar assessment procedure, administered pursuant to RCW 43.101.105 (2)(a)(i) and (ii)).~~

(4) The decision to request an officer's participation in the basic reserve law enforcement academy shall be discretionary with the head of the officer's employing agency, who shall advise the commission of the decision by appropriate notification upon hiring the officer. As a precondition of participation in the basic reserve law enforcement academy, applicants must satisfy those requirements set forth in RCW 43.101.080(19).

(5) A basic reserve certificate will be issued by the commission to any individual who successfully completes ~~((a))~~ the basic reserve law enforcement academy course of instruction ~~((for reserve officers))~~ as prescribed and required by the commission.

~~(6) ((Requirements of subsection (5) of this section may be waived in whole or in part. A request for waiver must be made under WAC 139-03-030. In reviewing such request, the commission will consider the following:~~

~~(a) An evaluation of an applicant's experience and training accomplishments;~~

~~(b) The fact that an individual is a regular full-time commissioned law enforcement officer who leaves full-time employment; or~~

(c) The fact that an officer has been certified in accordance with the requirements of subsection (2) of this section, and thereafter has engaged in regular and commissioned law enforcement employment without break or interruption in excess of twelve months duration.)) Reserve officers are not eligible for peace officer or tribal police officer certification, furthermore, employment as a specially commissioned peace officer/reserve officer is not considered continuous employment for the purposes set forth in RCW 43.101.095 and 43.101.157.

**WSR 14-01-018**  
**PROPOSED RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**  
[Filed December 9, 2013, 7:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-21-064.

Title of Rule and Other Identifying Information: WAC 139-05-825 Basic reserve law enforcement academy certificate of equivalency.

Hearing Location(s): Washington State Criminal Justice Training Commission (WSCJTC), Room E-154, 19010 1st Avenue South, Burien, WA 98148, on June 11, 2014, at 10 a.m.

Date of Intended Adoption: June 11, 2014.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail shirsch@cjtc.state.wa.us, fax (206) 835-7928, by June 2, 2014.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, rules coordinator, by June 9, 2014, TTY (206) 835-7300 or (206) 835-7372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to WAC 139-05-810 establish a process for certified peace officers to become reserve officers by complying with the rules established in this WAC.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Tisha Jones, Burien, Washington, (206) 835-7332; Implementation and Enforcement: Dave Bales, Burien, Washington, (206) 835-7289.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. The changes are not new, as they [are] simply mirroring the language of RCW 43.101.220.

December 9, 2013  
Sonja Hirsch  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-032, filed 9/9/09, effective 10/10/09)

**WAC 139-05-825 Basic reserve law enforcement academy certificate of equivalency.** (1) A peace officer whose certification, commission, and/or licensing has been revoked, sanctioned, suspended, or is under review by this state or any other state or territory is not eligible for a basic reserve law enforcement academy certificate of equivalency, regardless of the officer's prior years of law enforcement service.

(2) A certificate of equivalency for the basic reserve law enforcement academy shall be issued only to applicants who

successfully complete the equivalency process as required by the commission. For this purpose, the term "process" shall include all documentation and prerequisites set forth in subsection (6) of this section and successful completion of all knowledge and skills requirements within the basic reserve law enforcement equivalency academy. A certificate of completion of equivalent reserve law enforcement training is recognized in the same manner as the certificate of completion of the basic reserve law enforcement academy.

~~((2))~~ (3) Eligibility for participation in the basic reserve law enforcement equivalency process shall be limited to ~~((fully))~~:

(a) Specially commissioned ~~((reserve law enforcement))~~ peace officers ~~((and))~~ who have attained a basic reserve certificate through completion of a basic reserve law enforcement academy/program in Washington state; or

(b) Fully commissioned general authority peace officers who have attained ~~((basic))~~ peace officer certification through completion of a basic training program ~~((or a basic reserve law enforcement academy/program))~~ in this or another state ~~((and have incurred a break in service of more than twelve months but less than thirty-six months))~~. For this purpose, the term "basic training program" does not include any military or any federal training program not otherwise approved by the commission.

~~((3))~~ (4) Requirements for a ~~((person))~~ specially commissioned general authority peace officer to achieve a certificate of equivalency as a reserve law enforcement officer who has incurred a break in service of:

(a) More than twelve but less than ~~((twenty-four))~~ thirty-six months must successfully complete the requirements of RCW 43.101.080(19) and the comprehensive reserve final test proctored by the commission.

(b) ~~((More than twenty-four but less than thirty-six months must successfully pass the psychological and polygraph tests, complete the criminal history and background check, and successfully pass the comprehensive reserve final test proctored by the commission.~~

~~((e))~~ More than thirty-six months break in service requires the person to attend the basic reserve law enforcement academy.

~~((4) It shall be the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner and as necessary to ensure that the participation provided by this section is affected.)~~

(5) Requirements for a fully commissioned peace officer to achieve a certificate of equivalency as a reserve law enforcement officer who has incurred a break in service of:

(a) Less than twenty-four months must submit an application to be recognized as a reserve officer to the commission and successfully complete the requirements of RCW 43.101.-080(19).

(b) More than twenty-four months and less than sixty months requires the applicant to successfully complete the requirements of RCW 43.101.080(19) and the comprehensive reserve final test proctored by the commission.

(c) More than sixty month break in service requires the applicant to attend the basic reserve law enforcement academy.

~~(6)~~ (6) The decision to request an officer's participation within the equivalency process shall be discretionary with the head of the officer's employing agency, who shall advise the commission of the decision by appropriate notification upon the hiring of the officer. Upon receipt of such notification, the commission shall provide to such agency head all necessary forms and information required for the processing of a request for a certificate of equivalency. It shall be the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner.

~~((6))~~ (7) Upon approval of an applicant's eligibility to participate in the equivalency process, the applicant's employing agency must submit to the commission the following documentation as a precondition of participation within such process:

(a) A copy of the applicant's certificate of successful completion of an approved basic ~~((or))~~ reserve academy/program and/or a copy of the applicant's peace officer certification certificate as outlined in subsection (1) of this section.

(b) Proof ~~((that a search of state and national criminal history records has been conducted by the employing agency regarding applicant through appropriate submission of the applicant's fingerprints and such search indicated the absence of any conviction of applicant for a felony offense, a misdemeanor, or gross misdemeanor offense involving moral turpitude.~~

~~((e))~~ The candidate has successfully completed a psychological examination and a polygraph.

~~((d))~~ A copy of the applicant's current and valid driver's license) the applicant has successfully completed the requirements set forth in RCW 43.101.080(19).

~~((e))~~ (c) A record of the applicant's firearms qualification.

~~((f))~~ (d) A record that the applicant is current in defensive tactics.

(e) A record that the applicant is current in emergency vehicle operations.

~~((7))~~ (8) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission will issue a certificate of completion of equivalent basic reserve law enforcement training.

(9) Reserve officers are not eligible for peace officer or tribal police officer certification, furthermore, employment as a specially commissioned peace officer/reserve officer is not considered continuous full-time employment for the purposes set forth in RCW 43.101.095 and 43.101.157.

## WSR 14-01-019

### PROPOSED RULES

### CRIMINAL JUSTICE

### TRAINING COMMISSION

[Filed December 9, 2013, 7:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-21-061.

Title of Rule and Other Identifying Information: WAC 139-05-915 Requirements of training for law enforcement and corrections dog handlers and certification of canine teams.

Hearing Location(s): Washington State Criminal Justice Training Commission (WSCJTC), Room E-154, 19010 1st Avenue South, Burien, WA 98148, on June 11, 2014, at 10 a.m.

Date of Intended Adoption: June 11, 2014.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail shirsch@cjtc.state.wa.us, fax (206) 835-7928, by June 2, 2014.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, rules coordinator, by June 9, 2014, TTY (206) 835-7300 or (206) 835-7372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current[ly], canine teams are certified once for the life of the team; this is not the field norm. The WSCJTC certifies tribal police officers; therefore, these officers should be authorized canine team certification [certified]. Additional definitions are added to identify the various scenarios used in the field of canine training. Establishment of certification requirements for trailing [training] canine teams.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tisha Jones, Burien, Washington, (206) 835-7332.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. The changes are not new, as they [are] simply mirroring the language of RCW 43.101.220.

December 9, 2013  
Sonja Hirsch  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

**WAC 139-05-915 Requirements of training for law enforcement and corrections dog handlers and certification of canine teams.** (1) Title and scope: These rules are intended to set minimum standards of performance for the certification of canine teams that are used for law enforcement or corrections purposes. This process is not related to nor does it have any effect upon the requirements for peace officer certification. Nothing in these rules is intended to limit the use of canine teams employed by other state or federal agencies for law enforcement purposes, or the use of volunteer canine teams where the handler is not a Washington peace officer or corrections officer.

(2) For purposes of this section, the following definitions will apply:

(a) "Dog handler" means any (~~fully commissioned law enforcement officer~~) certified peace officer, Washington state certified tribal police officer, or corrections officer of a state, county, city, municipality, or combination thereof, agency who is responsible for the routine care, control, and utilization of a police canine within a law enforcement or corrections assignment; and

(b) "Canine team" means a specific officer and a specific canine controlled by that officer in the capacity of handler, formally assigned by the employing agency to work together in the performance of law enforcement or corrections duties.

(c) "Training" means any structured classroom or practical learning exercise conducted, evaluated, and documented by an experienced dog handler or trainer, certified as an instructor with recognized expertise on canine subjects associated with the development of the trainee's competency in the care, control, and utilization of a police canine.

(d) "Green canine" means a canine that has not received the minimum hours of training as described in subsection (4) of this section.

(e) "Green dog handler" means a dog handler that has not received the minimum hours of training as described in subsection (4) of this section.

(f) "Trained canine" means a canine that has previously received the minimum hours of training as described in subsection (4) of this section.

(g) "Trained dog handler" means an officer that has previously received the minimum hours of training as described in subsection (4) of this section.

(h) "Evaluator" means a certified peace officer, Washington state certified tribal police officer, or corrections officer(;) who has a minimum of three years of experience as a dog handler and is recognized as a trainer of canines by a professional organization of police and/or corrections dog handlers/trainers or by the handler's employing agency. The trainer must have trained a canine team in accordance with the training requirements of (~~WAC 139-05-915~~) subsection (4) of this section, or be recognized by the commission as a certified instructor with expertise in canine training of a specific police canine subject for the purpose of testing and certifying dog handlers and canines to work as a canine team.

(3) A dog handler must, as a precondition of such assignment, successfully complete the basic law enforcement academy or basic corrections officer academy, or otherwise comply with the basic training requirement prescribed by WAC 139-05-200 and 139-05-210 of the commission.

(4) Prior to (~~such assignment, a dog handler must~~) a canine team being put into service, the canine handler shall submit an application requesting canine team certification certifying the team has successfully (~~complete~~) completed training according to the nature and purpose of utilization of the police canine for which such handler is responsible.

(a) A dog handler who is responsible for the routine and regular utilization of a police patrol canine within general patrol or investigative activities(;) must successfully complete a minimum of four hundred hours of training, which will include, but not be limited to:

(i) Philosophies/theories of police canine;

(ii) Legal and liability aspects, including applicable department policies;

- (iii) Public relations;
- (iv) Care and maintenance;
- (v) ~~((Obedience and control))~~ Master protection;
- (vi) Tracking/trailing;
- (vii) ~~((Trailing))~~ Area search;
- (viii) ~~((Area))~~ Building search;
- (ix) ~~((Building))~~ Evidence search;
- (x) ~~((Evidence search))~~ Pursuit and holding; and
- (xi) ~~((Pursuit and holding; and~~
- ~~(xii) Master protection))~~ Obedience and control.

(b) A dog handler who is responsible for the primary and specialized utilization of a police canine in the search for and detection of specific controlled substances, ~~((excluding explosives))~~ (commonly known as a narcotic detection team) as identified in the guidelines set forth by the commission, must successfully complete a minimum of two hundred hours of training, which will include, but not be limited to:

- (i) Philosophies/theories of police canine;
- (ii) Legal and liability aspects, including applicable department policies;
- (iii) Public relations;
- (iv) Care and maintenance;
- (v) ~~((Obedience and control))~~ Detection of specific controlled substances;
- (vi) ~~((Area search))~~ Luggage/parcel;
- (vii) Building search;
- (viii) ~~((Evidence))~~ Vehicle search; and
- (ix) ~~((Vehicle search; and~~
- ~~(x) Detection of specific substances))~~ Obedience and control.

(c) A dog handler who is responsible for the primary and specialized utilization of a police canine in the search for and detection of explosive substances and devices, must successfully complete a minimum of four hundred hours of training, which will include, but not be limited to:

- (i) Philosophies/theories of police canine;
- (ii) Legal and liability aspects, including applicable department policies;
- (iii) Public relations;
- (iv) Care and maintenance;
- (v) ~~((Obedience and control))~~ Detection of explosive substances and devices;
- (vi) Area search;
- (vii) Private and commercial conveyance search;
- (viii) Building search; and
- (ix) ~~((Evidence search; and~~
- ~~(x) Detection of explosives))~~ Obedience and control.

(d) A dog handler who is responsible for the routine and regular utilization of a police canine solely for ~~((self-protection and assistance in hostile or potentially hostile situations;))~~ trailing humans must successfully complete ~~((at least))~~ a minimum of two hundred hours of training, which will include, but not be limited to:

- (i) Philosophies/theories of police canine;
- (ii) Legal and liability aspects, including applicable department policies;
- (iii) Public relations;
- (iv) Care and maintenance;
- (v) ~~((Obedience and control))~~ Detection of human scent;
- (vi) ~~((Pursuit and holding; and))~~ Trailing/tracking;

- (vii) ~~((Master protection))~~ Evidence search; and
- (viii) Obedience and control.

(5) The commission will develop and adopt a minimum performance standard for canine teams performing specific law enforcement or corrections functions, as outlined in the category certification rules and regulations. It is the handler's responsibility to keep their canines under control at all times. Each handler must be able to make their canine perform to a level that is deemed acceptable by the commission in the category for the team's intended use as a condition of certification.

(6) Certification of canine teams:

(a) The handler and the canine will be considered as a team and it is the team who will be certified. If the canine or the handler changes, a new team exists and the team must be certified.

(b) A dog handler may not use a canine for police purposes unless the handler is certified to handle a specific canine for a specific purpose.

(c) In evaluating the proficiency of the canine team, the evaluators shall use the standards approved by the commission for that particular skill category. Performance will be rated on a pass/fail basis. The evaluator has the discretion to discontinue the testing if excessive time has been spent without results, or if there is a concern about safety issues involving the canine, handler, or equipment.

(d) The commission will ~~((certify a))~~ approve applications for canine teams who can successfully show proficiency, under scrutiny of a canine evaluator, in all of the areas in which the canine will be used:

- (i) Patrol and investigation:
  - (A) Obedience;
  - (B) Protection and control;
  - (C) Area search;
  - (D) Building search; and
  - (E) Tracking/trailing.
- (ii) Narcotic detection:
  - (A) Building search;
  - (B) Vehicle search;
  - (C) ~~((Exterior search))~~ Luggage and parcel searches; and
  - (D) Obedience.
- (iii) Explosive detection:
  - (A) Obedience;
  - (B) Building search;
  - (C) Private and commercial ~~((conveyance))~~ vehicle search;
  - (D) ~~((Exterior))~~ Area search((-)); and
  - (E) Luggage/parcel search.
- (iv) ~~((Master protection:))~~
  - (A) Obedience;
  - ~~(B) Protection and control))~~ Trailing.

(e) For the purpose of canine team certification, applicants must meet the minimum training hours as required per discipline; credit for prior training hours from a separate discipline will not be recognized.

(f) Each certification issued pursuant to these rules will remain valid for twenty-four months, as long as the composition and responsibility of the canine team does not change. A canine team's certification shall automatically expire((s)) if the specific handler and canine, originally paired at the time

of certification, cease to perform canine team functions together or if the function for which the team was certified changes. ~~((It is recommended that teams recertify on an annual basis))~~ Using an approved form within sixty days of the team ceasing to function, the agency must notify the commission that the team has disbanded.

~~((f))~~ (g) If the canine team fails any phase of an evaluation, the team must be reevaluated in that particular phase. Canine teams will be allowed three attempts to successfully pass the requirements of each phase during an evaluation. If the team does not pass by the third attempt, the team must be reevaluated in all phases at a different time to be scheduled by the evaluator and approved by the commission.

(7) Recertification of canine teams:

(a) A canine team shall be evaluated, as identified in subsection (6) of this section, prior to their certification expiration date to maintain their certificate.

(b) The canine handler shall submit an application requesting canine team recertification certifying the team has successfully completed training according to the nature and purpose of utilization of the police canine for which such handler is responsible.

(8) Recordkeeping:

(a) Each agency is required to keep training, performance, and identification records on canines. The records must stay with the agency responsible for the canine team. The records will be made available for review in the event that the canine is sold or transferred to another agency. The records will include, but not be limited to:

- (i) Microchip number (if applicable);
- (ii) Canine's name;
- (iii) Breed;
- (iv) Training records;
- (v) Certification date;
- (vi) Date acquired or purchased;
- (vii) Source from which the canine was acquired;
- (viii) Purpose, use, or assignment of canine;
- (ix) Handler's name;
- (x) The date and reason the canine was released from service; and
- (xi) Copies of all incident reports in which use of the canine resulted in the use of force.

(b) These records must be retained for a period of one year from the date the canine is removed from active service unless a longer retention is required by statute or local ordinance.

(c) It is the responsibility of the handler to advise their employing agency of the fact that they have met the standards for canine certification. The proof of certification with the evaluator's signature along with a request for canine certification must be submitted to the commission by the employing agency. This will be considered as a request for certification. Upon verification that the minimum requirements have been met, the commission will issue certification to the canine team.

~~((8))~~ (9) Maintenance training:

(a) Best practice dictates the canine team should conduct regular objective-oriented training sufficient to maintain operational proficiency. Maintenance training is meant to sustain and enhance the performance of the handler, canine,

and the canine team. The canine team should spend an average of four hours per week in routine training to maintain the proficiency level of the team.

(b) Routine maintenance training, conducted by the handler to maintain the canine's proficiency and to reinforce odor recognition, is an acceptable form of training but may be combined with supervised training on a regular basis. Supervised training is conducted by a qualified trainer other than the handler, in order to improve performance and identify and correct training deficiencies. Performing proficiency assessments is considered a best practice.

(10) It is recommended that a canine intended for use by a law enforcement or corrections agency, be positively identified by having a microchip medically inserted in the canine. Any canine that is sold by a vendor to a Washington state governmental agency for use as a law enforcement or corrections canine should be able to be identified by microchip placed in the canine at the vendor's expense prior to the canine being sold to the law enforcement or corrections agency.

Once the microchip has been inserted, it is recommended that it not be removed except for medical necessity. If it becomes necessary to remove the microchip, the reason for the removal must be documented and entered into the canine's training records and a new microchip inserted, if medically appropriate.

**WSR 14-01-020**

**PROPOSED RULES**

**DEPARTMENT OF CORRECTIONS**

[Filed December 9, 2013, 8:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-21-107.

Title of Rule and Other Identifying Information: Earned release/good time for offenders.

Hearing Location(s): Edna Lucille Goodrich (ELG) Building, 7345 Linderson Way S.W., Room 1034, Tumwater, WA 98501, on February 4, 2014, at 1:00 p.m.

Date of Intended Adoption: February 4, 2014.

Submit Written Comments to: John Nispel, P.O. Box 41114, Olympia, WA 98504-1114, e-mail john.nispel@doc.wa.gov, fax (360) 664-2009, by January 27, 2014.

Assistance for Persons with Disabilities: Contact John Nispel by January 27, 2014, TTY 711 [or] (360) 725-8365.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To correct/update references to the department of corrections (DOC) policy.

Reasons Supporting Proposal: To accurately reflect DOC policy in the rule.

Statutory Authority for Adoption: RCW 72.09.130 and 72.01.090.

Statute Being Implemented: RCW 72.09.130.

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

Name of Proponent: Dell-Autumn Witten, governmental.



Name of Agency Personnel Responsible for Drafting:  
Dell-Autumn Witten, DOC HQ, (360) 725-8831.

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

A cost-benefit analysis is not required under RCW 34.05.328. No impact outside DOC.

December 9, 2013  
Bernard Warner  
Secretary

AMENDATORY SECTION (Amending WSR 11-11-018, filed 5/9/11, effective 6/9/11)

**WAC 137-30-030 Eligibility.** (1) **ERT.** The following offenders may receive ERT:

(a) Offenders convicted of a serious violent offense or a class A felony sex offense, committed after June 30, 1990, and before July 1, 2003, the ERT may not exceed fifteen percent of their sentence.

(b) Offenders convicted of a serious violent offense, or a class A felony sex offense, committed after June 30, 2003, the ERT may not exceed ten percent of their sentence.

(c) Regardless of the date of offense or the date of sentencing, offenders convicted before July 2, 2010, who are classified as moderate or low risk, may earn ERT up to fifty percent of their sentence: Provided, That they have not been convicted of or have a prior conviction of a:

- (i) Sex offense;
- (ii) Violent offense;
- (iii) Crime against a person, including identity theft in the first or second degree, committed on or after June 7, 2006;
- (iv) Felony domestic violence;
- (v) Residential burglary;
- (vi) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture of, delivery of, or possession with intent to deliver, methamphetamine;
- (vii) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
- (viii) Gross misdemeanor stalking;
- (ix) Violation of a domestic violence court order, including gross misdemeanors; or
- (x) Any felony committed while under community supervision.

(d) Offenders may earn ERT up to one-third of the sentence in all other cases not identified in this section.

(e) An offender who has transferred from one sentence within a cause number to the next sentence, or from one cause number to the next cause number, may lose ERT associated with the previous sentence or cause. ERT may be taken on a consecutive sentence that is not yet being served.

(f) Offenders found guilty of infractions 557 or 810 (WAC 137-25-030) will lose available ERT and privileges as outlined by ~~((DOC Policy 320.150 – Disciplinary Sanctions))~~ department policy and will lose their fifty percent eligibility. Offenders found guilty of infraction 813, related to employment or programming while in work release, will also lose available ERT and privileges.

(2) **Good conduct time.**

(a) All offenders will be eligible for good conduct time, except:

(i) Offenders sentenced to death or life without parole; ~~((and))~~

(ii) Offenders serving the mandatory or flat time enhancement portion of their sentences;

(iii) Community custody violators sanctioned by the department on or after May 2, 2012; and

(iv) Offenders sanctioned to community custody prison return or community custody inmate termination.

(b) Good conduct time will be applicable to all class A, B, and C felonies, except that: ~~((+))~~ Indeterminate offenders cannot earn good conduct time if their minimum term has expired and they have not been paroled or transferred to a consecutive sentence. ~~((+))~~ Any good conduct time earned or denied will be addressed to the correct sentence after the parole/transfer date is determined.

(c) Offenders may ~~((fail to earn))~~ lose earned and future good conduct time if found guilty of serious infractions listed in WAC 137-25-030 and sanctioned per ~~((DOC Policy 320.150 Disciplinary Sanctions))~~ department policy.

(d) A sentence reduction based on good conduct time will be established for each offender and computed on a pro rata basis for every thirty-day period served, as allowed by the offender's crime category.

(e) The following offenders may lose their good conduct time if found guilty of a serious infraction:

(i) Indeterminate offenders whose time has not been adopted by the indeterminate sentence review board (ISRB); and

(ii) Determinate offenders.

The amount of time lost will be determined by the disciplinary hearing officer/community hearing officer/ISRB.

(3) **Earned time.**

(a) Offenders who participate in approved programs, including work and school, are eligible for earned time for each calendar month as follows:

(i) Earned time eligible under ten percent rule - One and eleven one-hundredth days;

(ii) Earned time eligible under fifteen percent rule - One and seventy-six one-hundredth days;

(iii) Earned time eligible under thirty-three percent rule - Five days;

(iv) Earned time eligible under fifty percent rule - Ten days.

(b) An offender who disagrees with the risk assessment results has the right to appeal to the superintendent of the facility where the decision was made within forty-eight hours of notification ~~((per DOC Policy 320.400 Risk Assessment Process))~~.

(c) Offenders are not eligible for earned time if:

(i) They are serving an indeterminate sentence and:

(A) The cause has been extended to the maximum term by the ISRB; or

(B) The ISRB has previously denied future earned time.

(ii) They are not involved in mandatory programming as determined through the classification process and consistent with their custody facility plan. This includes refusing a mandatory work/school/program assignment or being terminated

from a mandatory work/school/program assignment for documented negative or substandard performance. An offender who is on a waiting list and then refuses a program assignment will lose earned time for the month in which she or he refused.

- Offenders previously determined qualified to receive fifty percent earned time will participate in programming or activities targeted in the custody facility plan. The offender will not be penalized if programs and activities are not available.

(iii) They refuse any transfer, excluding work release. No earned time, at the appropriate earned time percentage as allowed by crime category, will be granted for each calendar month the offender refuses assignment.

(iv) They serve twenty days or more in one calendar month in administrative segregation/intensive management status or disciplinary segregation. Loss of earned time will be calculated as allowed per crime category. The offender is not eligible to begin earning earned time until the superintendent approves placement in general population. Offenders who are approved for transfer to general population and are scheduled for release to the community within sixty days will not lose earned time unless found guilty of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release. For other than negative behavior, offenders (~~(on)~~) in administrative segregation(~~(/intensive management status)~~) will continue to earn earned time at the rate allowed by crime category, provided they maintain positive behavior throughout the placement.

(v) They are serving the mandatory (~~(minimum)~~) or flat time portion of their sentence, except indeterminate offenders sentenced for crimes committed before July 1, 1984.

(vi) At a classification hearing where earned time will be addressed, the offender will receive a written record of his/her earned time at least twenty-four hours prior to the scheduled classification review if earned time is not earned. Action taken by the committee is final and cannot be appealed.

(vii) Earned time not earned as a result of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release, cannot be restored.

(viii) Offenders will receive a written record of all earned time denials.

(4) Offenders are not eligible for fifty percent earned time if the offender's risk management level is changed to high risk violent or high risk nonviolent; high risk violent or high risk nonviolent offenders may earn up to one-third of the sentence.

#### WSR 14-01-024

#### PROPOSED RULES

#### DEPARTMENT OF

#### ENTERPRISE SERVICES

[Filed December 9, 2013, 10:37 a.m.]

Continuance of WSR 13-17-106.

Preproposal statement of inquiry was filed as WSR 13-14-065.

Title of Rule and Other Identifying Information: Chapter 200-100 WAC, Self-insurance requirements governing local government and nonprofit self-insurance.

Hearing Location(s): Presentation Room, 1500 Jefferson Street S.E., Olympia, WA 98501, on January 9, 2014, at 2:30-5:00 p.m.

Date of Intended Adoption: January 22, 2014.

Submit Written Comments to: Jack Zeigler, Rules and Policy Manager, Department of Enterprise Services (DES), Contracts and Legal Services Division, P.O. Box 41410, Olympia, WA 98504-1410, online <https://www.surveymonkey.com/s/RiskPoolRulemaking>, e-mail [rules@des.wa.gov](mailto:rules@des.wa.gov). Comments will be accepted through January 11, 2014.

Assistance for Persons with Disabilities: Contact Amy Julsrud by phone (360) 407-9317 or by e-mail [amy.julsrud@des.wa.gov](mailto:amy.julsrud@des.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DES has received written and oral comment on the proposed rule. We have considered those comments and made a preliminary decision to make no substantial changes to the proposed rule.

So that stakeholders may understand, before we adopt the proposed rule, how we considered the comments in reaching our preliminary decision, we have prepared a preliminary concise explanatory statement where we:

- Summarize all comments; and
- Respond to the comments.

We are extending the public comment time until close of business on January 11, 2014, and are holding an additional hearing. DES will consider and respond to any additional comments should DES receive any additional comments.

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 Jack Zeigler, Rules and Policy Manager, phone (360) 407-9209, e-mail [jack.zeigler@des.wa.gov](mailto:jack.zeigler@des.wa.gov), written comments online <https://www.surveymonkey.com/s/RiskPoolRulemaking> or e-mail [rules@des.wa.gov](mailto: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: Farrell Presnell, 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 adminis-

trative rules review committee made section 201 applicable to this rule adoption.

December 6, 2013  
Jack Zeigler  
Policy and Rules Manager

**WSR 14-01-027**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
(Medicaid Program)

[Filed December 9, 2013, 4:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-033.

Title of Rule and Other Identifying Information: WAC 182-533-0315 Maternity support services—Definitions, 182-533-0320 Maternity support services—Client eligibility, 182-533-0325 Maternity support services—Provider requirements, 182-533-0327 Maternity support services—Professional staff qualifications and interdisciplinary team, 182-533-0328 Maternity support services—Documentation requirements, 182-533-0330 Maternity support services—Covered services, 182-533-0340 Maternity support services—Noncovered services, 182-533-0345 Maternity support services—Payment, 182-533-0360 Infant case management—Purpose, 182-533-0365 Infant case management—Definitions, 182-533-0370 Infant case management—Client eligibility, 182-533-0375 Infant case management—Provider requirements, 182-533-0378 Infant case management—Documentation requirements, 182-533-0380 Infant case management—Covered services, 182-533-0385 Infant case management—Noncovered services, and 182-533-0386 Infant case management—Payment.

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 January 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 23, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. PST on January 22, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by January 14, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These revisions amend rule sections in the maternity support services (MSS) and infant case management (ICM) WACs that relate to staff qualifications for MSS and ICM providers. The purpose of these amendments is to align the sections with existing licensing requirements in department of health WACs; and to update related rule sections, including changes from the HCA

merger. These amendments also include minor housekeeping changes that update cross-references and clarify language.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Mick Pettersen, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Stacey Bushaw, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1829.

No small business economic impact statement has been prepared under chapter 19.85 RCW. HCA has analyzed the proposed rules and concluded that they do not impose more than minor costs on affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

December 9, 2013  
Kevin M. Sullivan  
Rules Coordinator

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

**WAC 182-533-0315 Maternity support services—Definitions.** The following definitions and those found in WAC (~~(388-500-0005)~~) 182-500-0005 apply to maternity support services (MSS) and infant case management (ICM) (see WAC (~~(388-533-0360)~~) 182-533-0360 through (~~(388-533-0386)~~) 182-533-0386 for ICM rules).

**"Basic health messages"**—For ~~((the purposes of))~~ MSS, ~~((means))~~ the preventive health education messages designed to promote healthy pregnancies, healthy newborns and healthy parenting during the first year of life.

**"Care coordination"**—Professional collaboration and communication between the client's MSS provider and other medical and/or health and social services providers to address the individual client's needs as identified in the care plan.

**"Care plan"**—A written ~~((plan that must be))~~ statement developed ((and maintained throughout the eligibility period for each client in MSS and ICM)) for a person that continues throughout the eligibility period and outlines any medical, social, environmental or other interventions to achieve an improved quality of life, including health and social outcomes.

**"Case conference"**—A formal or informal consultation used by the MSS interdisciplinary team to consult with each other and, when needed, other pertinent providers and/or the client to optimize the client's care.

**"Case management"**—Services to ~~((assist))~~ help individuals ~~((to gain))~~ access ((to)) needed medical, social, educational, and other services.

**"Childbirth education (CBE)"**—~~((Established as))~~ A component of the First Steps program to provide educational sessions offered in a group setting that prepares a pregnant

woman and her support person(s) for an upcoming childbirth and healthy parenting.

**"Department of health (DOH)"**—The state agency that works to protect and improve the health of people in Washington state.

~~("Department of social and health services (department)"~~—The state agency that administers social and health services programs for Washington state.)

**"First Steps"**—The program created under the 1989 Maternity Care Access Act.

**"Infant case management (ICM)"**—~~(Established as)~~ A component of the First Steps program to provide parent(s) with information and assistance in accessing needed medical, social, educational, and other services ~~((to))~~ that improve the welfare of infants.

**"Infant case management (ICM) screening"**—A brief in-person evaluation provided by a qualified person, under WAC 182-533-0375, to determine whether an infant and the infant's parent(s) have a specific risk factor(s).

**"Linking"**—~~(Assisting)~~ Assistance to clients ~~((to identify))~~ for identifying and ~~((use))~~ using community resources to address specific medical, social and educational needs.

**"Maternity cycle"**—An eligibility period for maternity support services that begins during pregnancy and continues to the end of the month in which the sixtieth-day post-pregnancy occurs.

**"Maternity support services (MSS)"**—~~(Established as)~~ A component of the First Steps program to provide screening, assessment, basic health messages, education, counseling, case management, care coordination, and other interventions delivered by an MSS interdisciplinary team during the maternity cycle.

**"Maternity support services (MSS) interdisciplinary team"**—A ~~((group of providers))~~ provider's group of qualified staff consisting of at least a community health nurse, a certified registered dietitian, a behavioral health specialist, and, at the discretion of the ~~((First Steps agency))~~ provider, a community health worker ~~((who work together and communicate frequently to share specialized knowledge, skills, and experience in order to address risk factors identified in a client's care plan))~~. Based upon individual client need, each team member ~~((must be available to))~~ provides maternity support services and consultation. (See WAC 182-533-0327(3).)

**"Medicaid agency"**—The health care authority.

**"Parent(s)"**—A person who resides with an infant ~~((and)),~~ provides the infant's day-to-day care, and ~~((is:~~

- The infant's natural or adoptive parent(s);
- A person other than a foster parent who has been granted legal custody of the infant; or
- A person who is legally obligated to support the infant) meets the legal description under WAC 182-533-0370 (1)(c).

**"Risk factors"**—The biopsychosocial factors that could lead to poor birth outcomes, infant morbidity, and/or infant mortality.

**"Screening"**—A method for systematically identifying and documenting risk factors and client need.

**"Washington apple health (WAH)"**—The public health insurance programs for eligible Washington residents. Washington apple health is the name used in Washington state for medicaid, the children's health insurance program (CHIP), and state-only funded health care programs. (See WAC 182-500-0120.)

**AMENDATORY SECTION** (Amending WSR 12-01-097, filed 12/20/11, effective 1/20/12)

**WAC 182-533-0320 Maternity support services—Client eligibility.** (1) To receive maternity support services (MSS), a client must:

(a) Be covered under ~~((one of the following medical assistance programs:~~

- (i) Categorically needy (CN);
- (ii) Children's health care as described in WAC 388-505-0210;
- (iii) Medically needy program (MNP); or
- (iv) A pregnancy medical program as described in WAC 388-462-0015.) categorically needy, medically needy, or state-funded medical programs under Washington apple health; and

(b) Be within the eligibility period of a maternity cycle as defined in WAC 182-533-0315;~~(; and~~

~~(c) Meet any other eligibility criteria as determined by the agency and published in the agency's current billing instructions and/or numbered memoranda.~~

~~(2) Clients who meet the eligibility criteria in this section may receive:~~

~~(a) An in-person screening by a provider who meets the criteria established in WAC 182-533-0325. Clients are screened for risk factors related to issues that may impact their birth outcomes.~~

~~(b) Up to the maximum number of MSS units of service allowed per client as determined by the agency and published in the agency's current billing instructions and/or numbered memoranda. The agency may determine the maximum number of units allowed per client when directed by the legislature to achieve targeted expenditure levels for payment of maternity support services for any specific biennium).~~

~~((3)) (2) Clients ~~((meeting))~~ who meet the eligibility criteria in this section ~~((who))~~ and are enrolled in an agency-contracted managed care organization (MCO)~~((;))~~ are eligible for MSS outside their plan.~~

~~((4) See chapter 182-534 WAC for clients eligible for coverage under the early periodic screening, diagnosis and treatment (EPSDT) program.~~

~~(5) Clients receiving MSS before March 1, 2011, are subject to the transition plan as determined and published by the agency in numbered memoranda.~~

~~(6)) (3) Clients who do not agree with an ~~((agency))~~ eligibility decision ~~((regarding eligibility))~~ for MSS have a right to a fair hearing under chapter ~~((388-02))~~ 182-526 WAC.~~

**AMENDATORY SECTION** (Amending WSR 12-01-097, filed 12/20/11, effective 1/20/12)

**WAC 182-533-0325 Maternity support services—Provider requirements.** Maternity support service providers

may include community clinics, local health departments, hospitals, and private clinics.

(1) To be paid for providing maternity support services (MSS) and infant case management (ICM) services to eligible clients, ~~((an agency or entity))~~ a provider must:

(a) Be enrolled as an eligible provider with the medicaid agency (see WAC 182-502-0010).

(b) Be currently approved as an MSS/ICM provider by the medicaid agency(;

~~(b) Be enrolled as an eligible provider with the medicaid agency (see WAC 182-502-0010);).~~

(c) Meet the requirements in this chapter, chapter 182-502 WAC and the medicaid agency's current billing instructions.

(d) Ensure that professional staff providing services;

(i) Meet the minimum regulatory and educational qualifications for the scope of services provided under WAC 182-533-0327; and

~~((d) Meet)~~ (ii) Follow the requirements in this chapter (~~chapter 182-502 WAC~~) and the medicaid agency's current (~~published~~) billing instructions (~~and numbered memoranda~~).

~~((2))~~ (e) Screen each client for risk factors.

(f) Screen clients for ICM eligibility.

(g) Conduct case conferences under WAC 182-533-0327(2).

(h) Develop and implement an individualized care plan for each client.

(i) Initiate and participate in care coordination activities throughout the maternity cycle with at least MSS interdisciplinary team members, the client's prenatal care provider, and the Women, Infants, and Nutrition (WIC) office.

(j) Comply with Section 1902 (a)(23) of the Social Security Act regarding the client's freedom to choose a provider.

(k) Comply with Section 1915 (g)(1) of the Social Security Act regarding the client's voluntary receipt of services.

(2) MSS providers may provide services in any of the following locations:

(a) A provider's office or clinic.

(b) The client's residence.

(c) An alternate site that is not the client's residence in the case of an unsafe place of residence or a potential problem with client confidentiality. (The reason for using an alternate site for visitation instead of the home must be documented in the client's record.)

(3) An individual or service organization that has a written contractual agreement with ~~((an agency or entity that meets the requirements in subsection (1) of this section))~~ a qualified MSS provider also may ~~((also))~~ provide MSS and ICM services to eligible clients.

(a) The ~~((medicaid agency requires the agency or entity to))~~ provider must:

(i) Keep a copy of the written subcontractor agreement on file;

(ii) Ensure that an individual or service organization staff member providing MSS/ICM services (the subcontractor) meets the minimum regulatory and educational qualifications required of an MSS/ICM provider;

(ii) ~~((Assure))~~ Ensure that the ~~((individual or service organization))~~ subcontractor provides MSS/ICM services under the requirements of this chapter; and

(iv) Maintain professional, financial, and administrative responsibility for the ~~((individual or service organization))~~ subcontractor.

(b) The ~~((agency or entity is responsible to))~~ provider must:

(i) Bill for services using the ~~((agency's or entity's))~~ provider's assigned ~~((provider))~~ billing number; and

(ii) Reimburse the ~~((individual or service organization))~~ subcontractor for MSS/ICM services provided under the written agreement.

#### NEW SECTION

**WAC 182-533-0327 Maternity support services—Professional staff qualifications and interdisciplinary team.** (1) MSS providers must use qualified professionals, as specified in this section.

(a) Behavioral health specialists who are currently credentialed or licensed in Washington by the department of health under chapters 246-809, 246-810, and 246-924 WAC as one of the following:

(i) Licensed mental health counselor.

(ii) Licensed independent clinical social worker.

(iii) Licensed social worker.

(iv) Licensed marriage and family therapist.

(v) Licensed psychologist.

(vi) Associate mental health counselor.

(vii) Associate independent clinical social worker.

(viii) Associate social worker.

(ix) Associate marriage and family therapist.

(x) Certified counselor.

(b) Certified dietitians who are currently registered with the commission on dietetic registration and certified by the Washington state department of health under chapter 246-822 WAC.

(c) Community health nurses who are currently licensed as registered nurses in the state of Washington by the department of health under chapter 246-840 WAC.

(d) Community health workers (CHWs) who have a high school diploma or the equivalent and:

(i) Have a minimum of one year of health care and/or social services experience.

(ii) Carry out all activities under the direction and supervision of a professional member or supervisor of the MSS interdisciplinary team.

(iii) Complete a training plan developed by their provider.

(2) The provider's qualified staff must participate in an MSS interdisciplinary team consisting of at least a community health nurse, a certified registered dietitian, a behavioral health specialist, and, at the discretion of the provider, a community health worker.

(a) The interdisciplinary team must work together to address risk factors identified in a client's care plan.

(b) Each qualified staff member acting within her/his area of expertise must address the variety of client needs identified during the maternity cycle.

(c) An MSS interdisciplinary team case conference is required at least once prenatally for clients who are entering MSS during pregnancy, and are eligible for the maximum level of service. Using clinical judgment and the client's risk factors, the provider may decide which interdisciplinary team members to include in case conferencing.

(3) All tribes and any county with fewer than fifty-five Medicaid births per year are not required to have an MSS interdisciplinary team, although they must meet all the other requirements in this chapter. Instead of the interdisciplinary team, these counties and tribes must have at least one of the following qualified professionals, as described in subsection (1) of this section:

- (a) A behavioral health specialist;
- (b) A registered dietician; or
- (c) A community health nurse.

#### NEW SECTION

**WAC 182-533-0328 Maternity support services—Documentation requirements.** Providers must fulfill the documentation requirements under WAC 182-502-0020 and the Medicaid agency's current billing instructions including:

- (1) Required supervision records for community health workers;
- (2) Continued education verification and renewal of credentials for professional staff;
- (3) Subcontracting documents, as specified under WAC 182-533-0325(3); and
- (4) Client records, which include consent forms and documentation for screening, assessments, care plans, case conferences, case management, and care coordination for each client.

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

**WAC 182-533-0330 Maternity support services—Covered services.** (1) The ~~((department))~~ Medicaid agency must cover((s)) these maternity support services (MSS) provided by an MSS interdisciplinary team ~~((; subject to the restrictions and limitations in this section and other applicable WAC:~~

- ~~((2) Covered services include)):~~
- ~~((a))~~ (a) In-person screening(s) for risk factors related to pregnancy and birth outcomes;
  - ~~((b))~~ (b) Brief assessment when indicated;
  - ~~((c))~~ (c) Brief counseling;
  - ~~((d))~~ (d) Education that relates to improving pregnancy and parenting outcomes;
  - ~~((e))~~ (e) Interventions for risk factors identified on the care plan;
  - ~~((f))~~ (f) Basic health messages;
  - ~~((g))~~ (g) Case management services;
  - ~~((h))~~ (h) Care coordination;
  - ~~((i))~~ (i) Family planning screening and referral;
  - ~~((j))~~ (j) Screening and referral for tobacco usage and/or exposure;
  - ~~((k))~~ (k) Infant case management (ICM) screening((; and

~~((l) Additional services as determined and published in the maternity support services/infant case management (MSS/ICM) billing instructions)).~~

~~((2) The Medicaid agency must determine the maximum number of units of services allowed per client when directed by the legislature to achieve targeted expenditure levels for payment of maternity support services for any specific biennium. (The maximum number of MSS units allowed per client is published in the agency's current billing instructions.)~~

~~((3) The ((department)) Medicaid agency must pay((s)) for covered maternity support services according to WAC ((388-533-0345)) 182-533-0345.~~

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

**WAC 182-533-0340 Maternity support services—Noncovered services.** (1) The ~~((department))~~ Medicaid agency must cover((s)) only those services ((that are)) listed in WAC ((388-533-0330)) 182-533-0330.

~~((2) The ((department)) Medicaid agency must evaluate((s)) a request for any noncovered service under the provisions of WAC ((388-501-0160. When early periodic screening, diagnosis and treatment (EPSDT) applies, the department evaluates a request for a noncovered service according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see chapter 388-534 WAC for EPSDT rules))) 182-501-0160.~~

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

**WAC 182-533-0345 Maternity support services—Payment.** The ~~((department))~~ Medicaid agency must pay((s)) for the covered maternity support services (MSS) described in WAC ((388-533-0330)) 182-533-0330 on a fee-for-service basis, subject to the ((following)) requirements in this section:

- (1) MSS must be:
  - (a) Provided to a client who meets the eligibility requirements in WAC ~~((388-533-0320;))~~ 182-533-0320.
  - (b) Provided to a client on an individual basis in a face-to-face encounter ~~((;))~~.
  - (c) Provided by ~~((an agency or entity))~~ a provider that meets the criteria established in WAC ~~((388-533-0325;))~~ 182-533-0325.
  - (d) Provided according to the ~~((department's))~~ Medicaid agency's current ((published maternity support services/infant case management (MSS/ICM))) billing instructions ((and/or numbered memoranda;)).
  - (e) Documented in the client's record or chart ~~((; and))~~.
  - (f) Billed using:
    - (i) The eligible client's ~~((department-assigned))~~ agency-assigned client identification number;
    - (ii) The appropriate procedure codes and modifiers identified in the ~~((department's))~~ agency's current ((published MSS/ICM)) billing instructions ((and/or numbered memoranda)); and
    - (iii) The ~~((agency's department-assigned))~~ agency-assigned MSS/ICM provider number. ((The ((department))

medicaid agency pays the ~~((agency or entity))~~ provider for providing MSS services to eligible clients, not the ~~((individual or service organization that has a written agreement with the agency to provide MSS.))~~ provider's subcontractor who provides MSS services. See WAC 182-533-0325(3) about subcontracting for services.

(2) The ~~((department))~~ medicaid agency:

(a) Must pay ~~((s))~~ MSS in units of time with one unit being equal to fifteen minutes of one-to-one service delivered face-to-face ~~((s))~~.

(b) When directed by the legislature to achieve targeted expenditure levels for payment of maternity support services for any specific biennium, may determine the maximum number of units allowed per client ~~((and))~~.

(c) ~~((Publishes))~~ Must publish the maximum number of units allowed per client in the ~~((MSS/ICM))~~ agency's current billing instructions ~~((and/or numbered memoranda))~~.

(3) The provider may request authorization for a limitation extension to exceed the number of allowed MSS units of service under WAC 182-501-0169.

(4) For a client enrolled in a managed care plan who is eligible to receive MSS, the ~~((department))~~ medicaid agency must pay ~~((s))~~ for MSS ~~((~~

~~((a))~~ delivered outside the plan on a fee-for-service basis as described in this section ~~((and~~

~~((b))~~ Subject to the same program rules that apply to a client who is not enrolled in a managed care plan.

(4) Limitation extension requests to exceed the number of allowed MSS units of service may be authorized according to WAC 388-501-0169).

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

**WAC 182-533-0360 Infant case management—Purpose.** The purpose of infant case management (ICM) is to improve the welfare of infants by providing their parent(s) with information and assistance ~~((in order))~~ to access needed medical, social, educational, and other services ~~((SSA-1915(g)))~~.

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

**WAC 182-533-0365 Infant case management—Definitions.** The definitions in WAC ~~((388-533-0315, Maternity support services definitions.))~~ 182-533-0315 also apply to infant case management (ICM).

AMENDATORY SECTION (Amending WSR 12-01-097, filed 12/20/11, effective 1/20/12)

**WAC 182-533-0370 Infant case management—Client eligibility.** (1) To be eligible to receive infant case management (ICM), an infant must meet all the following criteria:

(a) Be covered under ~~((one of the medical assistance programs listed in WAC 182-533-0320(1).))~~ categorically needy, medically needy, or state-funded medical programs under Washington apple health.

(b) Meet the age requirement for ICM, which is the day after the maternity cycle (defined in WAC 182-533-0315) ends, through the last day of the month of the infant's first birthday ~~((s))~~.

(c) Reside with at least one parent ~~((see WAC 182-533-0315 for definition of parent.))~~ who provides the infant's day-to-day care and is:

(i) The infant's natural or adoptive parent(s);

(ii) A person other than a foster parent who has been granted legal custody of the infant; or

(iii) A person who is legally obligated to support the infant.

(d) Have a parent(s) who needs assistance in accessing medical, social, educational and/or other services to meet the infant's basic health and safety needs ~~((and))~~.

(e) Not be receiving any case management services funded through Title XIX medicaid that duplicate ICM services.

(2) ~~((Infants who meet the eligibility criteria in subsection (1) of this section, and the infant's parent(s), are eligible to receive:~~

~~((a))~~ An in-person screening by a provider who meets the criteria established in WAC 182-533-0375. Infants and their parent(s) are screened for risk factors related to issues that may impact the infant's welfare, health, and/or safety.

~~((b))~~ Up to the maximum number of ICM units of service allowed per client as determined by the agency and published in the agency's current billing instructions and/or numbered memoranda. The agency may determine the maximum number of units allowed per client when directed by the legislature to achieve targeted expenditure levels for payment in any specific biennium.

~~((3))~~ Clients ~~((meeting))~~ who meet the eligibility criteria ~~((in subsection (1) of this section who))~~ and are enrolled in ~~((an))~~ a medicaid agency-contracted managed care organization (MCO) are eligible for ICM services outside their plan.

~~((4))~~ See chapter 182-534 WAC for clients eligible for coverage under the early periodic screening, diagnosis and treatment (EPSDT) program.

~~((5))~~ Clients receiving ICM before March 1, 2011, are subject to the transition plan as determined and published by the agency in numbered memoranda.

~~((6))~~ (3) If the infant's mother becomes pregnant during the ICM eligibility period and she is eligible for maternity support services (MSS), the infant and the infant's mother are no longer eligible to receive ICM services.

(4) Clients who do not agree with an ~~((agency))~~ eligibility decision ~~((regarding eligibility))~~ by the medicaid agency for ICM have a right to a fair hearing under chapter ~~((388-02))~~ 182-526 WAC.

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

**WAC 182-533-0375 Infant case management—Provider requirements.** (1) Infant case management (ICM) services ~~((can))~~ may be provided only by a qualified ~~((person))~~ infant case manager who is employed by ~~((an agency or entity that meets))~~ a provider meeting the requirements in

WAC ~~((388-533-0325))~~ 182-533-0325. ~~((Additionally, to qualify as an ICM provider, the person))~~

~~(2)~~ The infant case manager must meet at least one of the following qualifications under (a), (b), or (c) of this subsection:

~~((1))~~ (a) Be a current member of the maternity support services (MSS) interdisciplinary team~~((:))~~ under WAC 182-533-0327.

~~((2))~~ (b) Have a bachelor of arts, bachelor of science, or higher degree in a social service-related field, such as social work, behavioral sciences, psychology, child development, or mental health, plus at least one year of full-time experience working in one or more of the following areas:

~~((a))~~ (i) Community ~~((social))~~ services;

~~((b))~~ (ii) Social services;

(iii) Public health services;

~~((c))~~ (iv) Crisis intervention;

~~((d))~~ (v) Outreach and referral programs; or

~~((e))~~ (vi) Other ~~((social services-))~~ related fields.

~~((3))~~ (c) Have an associate of arts degree, or an associate's degree in a ~~((closely allied))~~ social service-related field, such as social work, behavioral sciences, psychology, child development, or mental health, plus at least two years of full-time experience ~~((in an area listed in (1) of this section. In addition, at least once per calendar month, the department requires a provider qualifying under this subsection to be under the supervision of a clinical staff person who meets the criteria in (1) of this section.))~~ working in one or more of the following areas:

(i) Community services;

(ii) Social services;

(iii) Public health services;

(iv) Crisis intervention;

(v) Outreach and referral programs;

(vi) Other related fields.

(3) The medicaid agency requires any staff person qualifying under subsection (2)(c) of this section to be under the supervision of a clinical staff person meeting the criteria in subsection (2)(a) or (b) of this section. Clinical supervision may include face-to-face meetings and/or chart reviews.

#### NEW SECTION

**WAC 182-533-0378 Infant case management—Documentation requirements.** Providers must fulfill the documentation requirements under WAC 182-502-0020 and the medicaid agency's current billing instructions including:

(1) Required supervision records for infant case managers;

(2) Continued education verification and renewal of credentials for professional staff; and

(3) Client records that include consent forms and documentation for screening, assessments, care plans, case management, and care coordination for each client.

AMENDATORY SECTION (Amending WSR 12-01-097, filed 12/20/11, effective 1/20/12)

**WAC 182-533-0380 Infant case management—Covered services.** (1) The medicaid agency must cover~~((s))~~ infant case management (ICM) services subject to the restric-

tions and limitations in this section and other applicable WAC.

~~((2))~~ Covered services include:

(a) An initial in-person screening for ICM services, which includes an assessment of risk factors~~((:))~~ and the development of an individualized care plan;

(b) Case management services and care coordination;

(c) Referral and linking ~~((and referring))~~ the infant and parent(s) to other services or resources;

(d) ~~((Advocating))~~ Advocacy for the infant and parent(s); and

(e) Follow-up contact(s) with the parent(s) to ensure the care plan continues to meet the needs of the infant and parent(s)~~((; and~~

~~((f) Additional services as determined and published in the maternity support services/infant case management (MSS/ICM) billing instructions)).~~

(2) The medicaid agency may determine the maximum number of units allowed per client when directed by the legislature to achieve targeted expenditure levels for payment in any specific biennium. (The maximum number of ICM units allowed per client is published in the agency's current billing instructions.)

(3) The medicaid agency must pay~~((s))~~ for covered ICM services according to WAC 182-533-0386.

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

**WAC 182-533-0385 Infant case management—Non-covered services.** (1) The ~~((department))~~ medicaid agency must cover~~((s))~~ only those services that are listed in WAC ~~((388-533-0380))~~ 182-533-0380.

(2) The ~~((department))~~ medicaid agency must evaluate~~((s))~~ a request for any noncovered service under the provisions of WAC ~~((388-501-0160. When early periodic screening, diagnosis and treatment (EPSDT) applies, the department evaluates a request for a noncovered service according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see chapter 388-534 WAC for EPSDT rules))~~) 182-501-0160.

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

**WAC 182-533-0386 Infant case management—Payment.** (1) The ~~((department))~~ medicaid agency must pay~~((s))~~ for the covered infant case management (ICM) services described in WAC ~~((388-533-0380))~~ 182-533-0380 on a fee-for-service basis subject to the following requirements.

~~((1))~~ ICM services must be:

(a) Provided to a client who meets the eligibility requirements in WAC ~~((388-533-0370:))~~ 182-533-0370.

(b) Provided by a person who meets the criteria established in WAC ~~((388-533-0375:))~~ 182-533-0375.

(c) Provided according to the ~~((department's))~~ agency's current ~~((published maternity support services/infant case management (MSS/ICM)))~~ billing instructions ~~((and/or numbered memoranda:))~~.



(d) Documented in the infant's and/or ~~((infant's parent(s)))~~ the parent's record or chart ~~((; and))~~.

(e) Billed using:

(i) The eligible infant's ~~((department assigned))~~ medicaid agency-assigned client identification number;

(ii) The appropriate procedure codes and modifiers identified in the ~~((department's))~~ agency's current ~~((published MSS/ICM))~~ billing instructions ~~((and/or numbered memoranda))~~; and

(iii) The ~~((department assigned))~~ medicaid agency-assigned MSS/ICM provider number.

(2) The ~~((department))~~ medicaid agency:

(a) Must pay ~~((s))~~ ICM services in units of time, with one unit being equal to fifteen minutes of one-to-one service delivered face-to-face ~~((;))~~.

(b) When directed by the legislature to achieve targeted expenditure levels for payment of maternity support services for any specific biennium, may determine the maximum number of units allowed per client ~~((; and))~~.

(c) ~~((Publishes))~~ Must publish the maximum number of units allowed per client in the ~~((MSS/ICM))~~ agency's current billing instructions ~~((and/or numbered memoranda))~~.

(3) The provider may request authorization for a limitation extension to exceed the number of allowed ICM units of service under WAC 182-501-0169.

(4) For a client enrolled in a managed care plan who is eligible to receive ICM, the ~~((department))~~ medicaid agency must pay ~~((s))~~ ICM services ~~((;~~

~~((a)))~~ delivered outside the plan on a fee-for-service basis as described in this section ~~((; and~~

~~((b))~~ Subject to the same program rules that apply to a client who is not enrolled in a managed care plan.

~~((4))~~ Limitation extension requests to exceed the number of allowed ICM units of service may be authorized according to WAC 388-501-0169).

### WSR 14-01-052

#### WITHDRAWAL OF PROPOSED RULES

#### DEPARTMENT OF FISH AND WILDLIFE

[Filed December 12, 2013, 10:59 a.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-56-112 and the repealer for WAC 232-12-082 from WSR 13-14-118, which was filed on July 3, 2013. The Washington fish and wildlife commission did not adopt any changes in WAC 220-56-112, and it did not choose to repeal WAC 232-12-082 at this time.

Joanna M. Eide  
Rules Coordinator

### WSR 14-01-069

#### PROPOSED RULES

#### HORSE RACING COMMISSION

[Filed December 16, 2013, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-21-036.

Title of Rule and Other Identifying Information: WAC 260-84-065 Licensees—Drug and alcohol penalties.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 14, 2014, at 9:30 a.m.

Date of Intended Adoption: February 14, 2014.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by February 11, 2014.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 11, 2014, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Separates penalties for alcohol and prescription medication violations from illegal controlled substance penalties.

Reasons Supporting Proposal: Stakeholder requested and supported.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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

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

December 16, 2013

Douglas L. Moore  
Executive Secretary

AMENDATORY SECTION (Amending WSR 13-07-046, filed 3/15/13, effective 4/15/13)

**WAC 260-84-065 Licensees—Drug and alcohol penalties.** (1) Be under the influence of or affected by intoxicating liquor, marijuana, and/or prescription drugs, ~~((or have within their body any illegal controlled substance))~~ in violation of WAC 260-34-020 (1) and (5):

(a) First offense - Warning to one-day suspension;

(b) Second offense - Three-day suspension;

(c) Third offense - Thirty-day suspension;

(d) Subsequent offenses (within five years) - One-year suspension.

(2) Be under the influence of or affected by intoxicating liquor, marijuana, and/or prescription drugs, ~~((or having within their body any illegal controlled substance,))~~ while on horseback, in violation of WAC 260-34-020 (1) and (5):

- (a) First offense - Warning to one-day suspension;
- (b) Second offense - Three-day to thirty-day suspension;
- (c) Third offense - Thirty-day to one-year suspension;
- (d) Subsequent offenses (within five years) - Revocation.

(3) Be under the influence of or affected by, or have within their body any illegal controlled substance or un-prescribed medication in violation of WAC 260-34-020(1):

- (a) First offense - Thirty-day suspension;
- (b) Second offense – One hundred eighty-day suspension;
- (c) Third offense – Three hundred sixty-five day suspension;
- (d) Subsequent offenses – Revocation.

(4) Engage in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2):

- (a) First offense - Five-day suspension;
  - (b) Second offense - Thirty-day suspension;
  - (c) Third offense - One-year suspension;
  - (d) Subsequent offenses (within five years) - Revocation.
- ~~((4))~~ (5) Engaging in the illegal sale or distribution of a controlled substance, including marijuana, or possess an illegal controlled substance, including marijuana with intent to deliver in violation of WAC 260-34-020(3), revocation and immediate ejection from the grounds.

~~((5))~~ (6) Possess an illegal controlled substance, including marijuana if under the age of twenty-one, and excluding marijuana if twenty-one years or older in violation of WAC 260-34-020(4):

- (a) First offense - Thirty-day suspension;
- (b) Second offense - One-year suspension; and
- (c) Third offense - Revocation.

~~((6))~~ (7) Possession of marijuana over the age of twenty-one, WAC 260-34-020(5):

- (a) First offense - Warning to ~~((one-day))~~ three-day suspension;
- (b) Second offense - Three-day to thirty-day suspension;
- (c) Third offense - Thirty-day to one-year suspension;
- (d) Subsequent offenses (within five years) - Revocation.

~~((7))~~ (8) Possession of any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance in violation of WAC 260-34-020(6):

- (a) First offense - Three-day suspension;
- (b) Second offense - Three-day to thirty-day suspension;
- (c) Third offense - One-year suspension;
- (d) Subsequent offenses (within five years) - Revocation.

~~((8))~~ (9) Refusal to submit to blood, breath, oral fluids, and/or urine testing, in violation of WAC 260-34-020(7), immediate ejection (~~((from))~~) from the grounds and a one-year suspension (~~((to))~~).

Subsequent offenses - Revocation.

~~((9))~~ (10)(a) For violations of WAC 260-34-020 (1), (4), or (5), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug

rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during the period of the stay a licensee or applicant violates the provisions of chapter 260-34 WAC, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to comply with the following conditions during the duration of the treatment program:

(i) Remain in compliance with the rehabilitation and/or treatment program.

(ii) Submit to random drug or alcohol testing at the discretion of the board of stewards or commission (~~((security))~~) investigators.

(iii) Have no violations of chapter 260-34 WAC.

Upon completion of the rehabilitation or treatment program, the licensee or applicant must provide documentation of completion to the board of stewards. Upon making a determination that the licensee or applicant successfully completed the rehabilitation or treatment program, the board of stewards may direct that the final disposition of the violation will be that the licensee or applicant completed a treatment program in lieu of suspension.

(b) If the board of stewards finds that the licensee or applicant failed to comply with the conditions required in (a)(iii) of this subsection, the board of stewards may impose the original suspension. If the failure to comply with the conditions of the stay is a violation of chapter 260-34 WAC, the board of stewards may also hold a ruling conference for that rule violation and impose such penalty as is provided for that violation.

~~((10))~~ (11) Any licensee or applicant who tests positive (presumptive or confirmatory) for the presence of an illegal controlled substance is prohibited from performing any duties for which a license is required until the licensee does not test positive (presumptive or confirmatory) for the presence of any illegal controlled substance.

~~((11))~~ (12) Any licensee or applicant who is affected by intoxicating liquor or who has an alcohol concentration of 0.08 percent or higher is prohibited from performing any duties for which a license is required until the licensee is not affected by intoxicating liquor and his/her alcohol concentration is below 0.08 percent.

~~((12))~~ (13) Any licensee or applicant who has an alcohol concentration of 0.02 percent or higher while on horseback is prohibited from being on horseback until his/her alcohol concentration is below 0.02 percent.

(14) Any licensee or applicant who tests positive (presumptive or confirmatory) for the presence of marijuana is prohibited from performing any duties for which a license is required until the licensee provides a negative test for the presence of marijuana.

**WSR 14-01-070**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed December 16, 2013, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-23-029.

Title of Rule and Other Identifying Information: Chapter 260-48 WAC, Mutuels.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 14, 2014, at 9:30 a.m.

Date of Intended Adoption: February 14, 2014.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail [doug.moore@whrc.state.wa.us](mailto:doug.moore@whrc.state.wa.us), fax (360) 459-6461, by February 11, 2014.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 11, 2014, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Defines what a self-service device is and to change the definition of a cash voucher from a document to a record to include electronic documents.

Reasons Supporting Proposal: Stakeholder requested and supported.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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

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

December 16, 2013  
 Douglas L. Moore  
 Executive Secretary

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

**WAC 260-48-490 Definitions.** (1) "Common pool wagering." The inclusion of wagers placed at guest association locations and secondary parimutuel organizations (SPMO) into a common parimutuel pool for the purpose of display of wagering information and calculation of payoffs on winning wagers.

(2) "Guest association." An association approved to offer simulcast races and parimutuel wagering on races conducted at other racetracks.

(3) "Host association." An association where live racing and parimutuel wagering are conducted and on which parimutuel wagering is conducted by guest associations or satellite locations.

(4) "Parimutuel system." The hardware, software and communications equipment used to record wagers, calculate payouts for winning wagers, and transmit wagering transactions and parimutuel pool data for display to patrons and to communicate with other parimutuel systems linked to facilitate common pool wagering.

(5) "Parimutuel wagering." A form of wagering on the outcome of a horse race in which all wagers are pooled and held by a parimutuel pool host for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning contestants.

(6) "Parimutuel voucher." A record of a parimutuel wager in either paper or electronic form.

(7) "Secondary parimutuel organization (SPMO)." An entity other than a licensed association that offers and accepts parimutuel wagers. This may include a satellite location (off-track wagering) or an advance deposit wagering service provider.

~~((7))~~ (8) "Self-service device." A computerized wagering device that allows the patron, only while on the grounds of a licensed Class 1 racing association, to wager by use of portable electronic device. The self-service device allows the patron to place wagers only. The patron must contact a mutuel clerk to cash in any winnings.

(9) "Self-service terminal." A computerized wagering device that allows the patron to wager by use of a touch activated screen using account cards, vouchers, winning tickets and cash.

~~((8))~~ (10) "Simulcast." Live video and audio transmission of a race and parimutuel information for the purpose of parimutuel wagering at locations other than a host association.

(11) "Stored value instrument." A self-service device or self-service terminal.

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

**WAC 260-48-520 Parimutuel tickets.** A parimutuel ticket is evidence of a wager into the parimutuel pool operated by the association and is evidence of the association's obligation to pay to the holder a portion of the distributable amount of the parimutuel pool that is represented by a valid parimutuel ticket. The association must cash all valid winning parimutuel tickets when they are presented for payment.

(1) To be deemed a valid parimutuel ticket, the ticket must have been issued by a parimutuel ticket machine, self-service terminal operated by the association, or self-service device and recorded as a ticket entitled to a share of the parimutuel pool. The parimutuel ticket must also contain the following:

- (a) The name of the association operating the meeting;
- (b) A unique identifying number or code;
- (c) The terminal ~~((at which))~~ or device where the ticket was issued;
- (d) The date that the wagering transaction was issued;
- (e) The race number;
- (f) The type or types of wager(s);
- (g) The number or numbers representing the betting interests; and

(h) The amount or amounts of the wagers into the parimutuel pool or pools for which the ticket is evidence.

(2) No parimutuel ticket recorded or reported as paid, ~~((cancelled))~~ canceled, or nonexistent will be considered a valid parimutuel ticket.

(3) The association must maintain a record of all winning parimutuel tickets, not presented for payment. A record of these tickets when cashed must be retained for a period of twenty-four months from the date cashed. This record will be made available for inspection by the commission or its authorized representative when requested.

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

**WAC 260-48-680 Parimutuel ~~((cash))~~ vouchers.** (1) A parimutuel ~~((cash))~~ voucher is a ~~((document))~~ record or card produced by a parimutuel system device on which a stored cash value is represented and the value is recorded in and redeemed through the parimutuel system. Parimutuel ~~((cash))~~ vouchers may be offered by an association that issues parimutuel tickets. The stored value on a voucher may be redeemed in the same manner as a value of a winning parimutuel ticket for wagers placed at a parimutuel window, a self-service device, or a self-service terminal, and may be redeemed for their cash value at any time.

(2) An association may, with the prior approval of the commission, issue special parimutuel cash vouchers as incentives or promotional prizes, and may restrict the use of those vouchers to the purchase of parimutuel wagers.

(3) The tote system transaction record for all parimutuel vouchers will include the following:

(a) The voucher identification number in subsequent parimutuel transactions;

(b) Any parimutuel wagers made from a voucher will identify the voucher by identification number.

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

**WAC 260-48-690 Other stored value instruments and systems.** (1) An association may not, without the prior approval of the commission, utilize any form of stored value instrument or system other than a parimutuel voucher for the purpose of making or cashing parimutuel wagers.

(2) Any request for approval of a stored value instrument or system will include a detailed description of the standards utilized:

(a) To identify the specific stored value instrument or account in the parimutuel system wagering transaction record;

(b) To verify the identity and business address of the person(s) obtaining, holding, and using the stored value instrument or system; and

(c) To record and maintain records of deposits, credits, debits, transaction numbers, and account balances involving the stored value instruments or accounts.

(3) A stored value instrument or system will prevent wagering transactions in the event such transactions would create a negative balance in an account, and will not automatically transfer funds into a stored value instrument or account

without the direct authorization of the person holding the instrument or account.

(4) A stored value instrument while being used to place a wager may only send and receive the signal within the association's property.

(5) Any request for approval of a stored value instrument or system will include all records and reports relating to all transactions, account records, and customer identification and verification in hard copy or in an electronic format approved by the commission. All records will be retained for a period of not less than three years.

## WSR 14-01-075

### PROPOSED RULES

### DEPARTMENT OF HEALTH

[Filed December 16, 2013, 10:28 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: WAC 246-825-990 License fees, proposing to reduce genetic counselor initial application and renewal fees.

Hearing Location(s): Department of Health, Town Center 2 (TC2), Room 145, 111 Israel Road S.E., Tumwater, WA 98501, on January 27, 2014, at 1:30 p.m.

Date of Intended Adoption: February 14, 2014.

Submit Written Comments to: Susan Gragg, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, e-mail [http://www3.doh.wa.gov/policy\\_review/](http://www3.doh.wa.gov/policy_review/), fax (360) 236-2901, by January 27, 2014.

Assistance for Persons with Disabilities: Contact Susan Gragg by January 20, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule decreases fees for the genetic counselor profession. Current licensing fees generate more revenue than is needed to cover the full cost of administering the programs for this profession. The department is proposing to amend WAC 246-825-990 to reduce the initial application and license renewal fees for this profession.

Reasons Supporting Proposal: This proposed fee reduction is in response to a petition for a review of fees by the Washington State Genetic Counselor Network. RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on the department's licensure costs. Reducing fees to the proposed levels will align revenue with the program's expenses and enables reserves to be maintained should unanticipated events, such as increased disciplinary costs, occur.

Statutory Authority for Adoption: RCW 43.70.250, 43.70.110.

Statute Being Implemented: RCW 43.70.110.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Gragg, Town Center 2, 111 Israel Road S.E., Tumwa-

ter, WA 98501, (360) 236-4941; Implementation: Shannon Beigert, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4606; and Enforcement: Chris Humberson, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

December 13, 2013  
 John Wiesman, DrPH, MPH  
 Secretary

**AMENDATORY SECTION** (Amending WSR 10-22-090, filed 11/1/10, effective 11/1/10)

**WAC 246-825-990 License fees.** (1) Licenses must be renewed every year on the practitioner's birthday as provided under chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title	Fee
Application	<del>((300.00))</del> <u>200.00</u>
Renewal	<del>((300.00))</del> <u>200.00</u>
Late renewal penalty	<del>((150.00))</del> <u>100.00</u>
Expired license reissuance	<del>((150.00))</del> <u>100.00</u>
Duplicate license	30.00
Certification of licensure	30.00

(3) The following nonrefundable fees will be charged for provisional license:

Title	Fee
Application	30.00
Renewal	30.00
Late renewal penalty	30.00
Duplicate provisional license	30.00

**WSR 14-01-078**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 13-01—Filed December 16, 2013, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-019.

Title of Rule and Other Identifying Information: The department of ecology (ecology) proposes to adopt amendments to certain portions of State Environmental Policy Act (SEPA), chapter 197-11 WAC. This rule provides uniform requirements for compliance with SEPA. Ecology proposes repealing the SEPA model ordinance, chapter 173-806 WAC and providing this information in guidance. Ecology also proposes repealing public records, chapter 197-06 WAC. This rule is out of date and refers to the council on environmental policy that no longer exists. The sections of the rule relating to public records have been superseded by chapter 173-03 WAC.

Hearing Location(s): Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, call-in number to participate and provide comments by phone 1-800-704-9804 – Pin number 8386377#, on January 29, 2014. Hearing #1 starts at 1:30 p.m. and Hearing #2 starts at 6:30 p.m. Ecology will have a brief presentation, followed by a question and answer session followed by the formal hearing.

Date of Intended Adoption: March 12, 2014.

Submit Written Comments to: Fran Sant, Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, (360) 407-6004, e-mail [separulemaking@ecy.wa.gov](mailto:separulemaking@ecy.wa.gov), fax (360) 407-6904, by February 5, 2014.

Assistance for Persons with Disabilities: Contact shorelands and environmental assistance program, by January 22, 2014, (360) 407-6600.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology proposes to adopt amendments to chapter 197-11 WAC, State Environmental Policy Act (SEPA). The rule changes include, but are not limited to the following:

- Expanded use of NEPA documentation by lead agencies.
- Update of definition for "lands covered by water."
- For adoption of increased flexible thresholds for minor new construction, more specific requirements regarding cultural resources and an increase in notice to sixty days.
- Expanded minor new construction exemptions for installation or removal of tanks and solar energy projects.
- New maintenance exemption for smaller dredging projects.
- Update of exemption for land use decisions to provide that most land use decisions will be exempt for otherwise exempt projects, with some limited exceptions.
- New exemption for formation of special districts.
- New exemption for text amendments of ordinances or codes that do not change environmental standards.
- Update of utility exemption for water pipe size to align with industry standards.
- Allow department of natural resources (DNR) rock sales on state owned land.
- Updated Washington state department of transportation (WSDOT) maintenance exemptions.

- Environmental checklist updates.
- Other minor updates, clarifications and technical corrections.

Ecology proposes to repeal chapter 173-806 WAC in response to changes being made in chapter 197-11 WAC and will make the model ordinance available as guidance rather than rule.

Ecology also proposes to repeal chapter 197-06 WAC. This rule is being repealed because (1) a number of the provisions are specific to the council on environmental policy that was established in the 1970s and no longer exists; (2) the sections of the rule related to public records have been superseded by chapter 173-03 WAC.

Reasons Supporting Proposal: Section 301, chapter 1, Laws of 2012 1st sp. sess. (2ESSB 6406) directed ecology to update the SEPA rules. The 2012 legislature directed ecology to modernize the SEPA rules in 2013:

- Update, but not decrease, the thresholds for all other projects actions in WAC 197-11-800.
- Create categorical exemptions for minor code amendments that do not lessen environmental protection.
- Propose methods for integrating the SEPA process with provisions of the Growth Management Act.

In addition ecology was also directed by 2ESSB 6406 to convene an advisory committee to assist ecology in:

- Updating the environmental checklist.
- Ensure that state agencies, other interested parties and federally recognized tribes receive notice about projects under chapter 43.21C RCW and through other means.

Ecology is also making technical corrections to rule language in order to update and modernize the SEPA rules.

Ecology is repealing chapter 173-806 WAC and making the SEPA model ordinance available as guidance rather than rule. Ecology will be able to more easily update the guidance in the future.

Ecology is repealing chapter 197-06 WAC because the rule is out-of-date and makes reference to the council on environmental policy that no longer exists.

Statutory Authority for Adoption: SEPA, RCW 43.21C.-110, see also RCW 43.21C.100 which abolished the council of environmental policy as of June 30, 1976.

Statute Being Implemented: Chapter 43.21C RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Brenden McFarland, Department of Ecology, Lacey, Washington, (360) 407-6976; and Enforcement: Not applicable.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments meet the criteria of exemption from analysis under RCW 19.85.030 which requires an agency to prepare a small business economic impact state [statement] (SBEIS) "if the

proposed rule will impose more than minor cost on business or any industry." The proposed amendments to ecology's SEPA rules don't impose any costs on business. Therefore, an SBEIS is not required for the proposed rule amendments.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Fran Sant, Department of Ecology, P.O. Box 47703, Olympia, WA 98504, phone (360) 407-6004, fax (360) 407-6904, e-mail [separulemaking@ecy.wa.gov](mailto:separulemaking@ecy.wa.gov).

December 15, 2013

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending WSR 97-21-030, filed 10/10/97, effective 11/10/97)

**WAC 197-11-158 SEPA/GMA project review—Reliance on existing plans, laws, and regulations.** (1) In reviewing the environmental impacts of a project and making a threshold determination, a GMA county/city may, at its option, determine that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations and comprehensive plan adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws or rules, provide adequate analysis of and mitigation for some or all of the specific adverse environmental impacts of the project.

(2) In making the determination under subsection (1) of this section, the GMA county/city shall:

(a) Review the environmental checklist and other information about the project;

(b) Identify the specific probable adverse environmental impacts of the project and determine whether the impacts have been:

(i) Identified in the comprehensive plan, subarea plan, or applicable development regulations through the planning and environmental review process under chapter 36.70A RCW or this chapter, or in other local, state, or federal rules or laws; and

(ii) Adequately addressed in the comprehensive plan, subarea plan, applicable development regulations, or other local, state, or federal rules or laws by:

(A) Avoiding or otherwise mitigating the impacts; or

(B) The legislative body of the GMA county/city designating as acceptable the impacts associated with certain levels of service, land use designations, development standards, or other land use planning required or allowed by chapter 36.70A RCW;

(c) Base or condition approval of the project on compliance with the requirements or mitigation measures in the comprehensive plan, subarea plan, applicable development regulations, or other local, state, or federal rules or laws; and

(d) Place the following statement in the threshold determination if all of a project's impacts are addressed by other applicable laws and no conditions will be required under SEPA: "The lead agency has determined that the requirements for environmental analysis, protection, and mitigation measures have been adequately addressed in the development regulations and comprehensive plan adopted under chapter 36.70A RCW, and in other applicable local, state, or federal

laws or rules, as provided by RCW 43.21C.240 and WAC 197-11-158. Our agency will not require any additional mitigation measures under SEPA."

(3) Project specific impacts that have not been adequately addressed as described in subsection (2) of this section might be probable significant adverse environmental impacts requiring additional environmental review. Examples of project specific impacts that may not have been adequately addressed include, but are not limited to, impacts resulting from changed conditions, impacts indicated by new information, impacts not reasonably foreseeable in the GMA planning process, or impacts specifically reserved in a plan EIS for project review.

(4) In deciding whether a project specific adverse environmental impact has been adequately addressed by an existing rule or law of another agency with jurisdiction, the GMA county/city shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the GMA county/city shall base or condition its project approval on compliance with these other existing rules or laws.

(5) If a GMA county/city's comprehensive plan, subarea plan, or development regulations adequately address some or all of a project's probable specific adverse environmental impacts, as determined under subsections (1) and (2) of this section, the GMA county/city shall not require additional mitigation under this chapter for those impacts.

(6) In making the determination in subsection (1) of this section, nothing in this section requires review of the adequacy of the environmental analysis associated with the comprehensive plans and development regulations that are being relied upon to make that determination.

**AMENDATORY SECTION** (Amending WSR 97-21-030, filed 10/10/97, effective 11/10/97)

**WAC 197-11-164 Planned actions—Definition and criteria.** (1) Under RCW ((43.21C.031)) 43.21C.440, GMA counties/cities may designate a planned action. A planned action means one or more types of project action that:

(a) Are designated planned actions by an ordinance or resolution adopted by a GMA county/city;

(b) Have had the significant environmental impacts adequately addressed in an EIS prepared in conjunction with:

(i) A comprehensive plan or subarea plan adopted under chapter 36.70A RCW; or

(ii) A fully contained community, a master planned resort, a master planned development, or a phased project;

(c) Are subsequent or implementing projects for the proposals listed in (b) of this subsection;

(d) Are located within an urban growth area, as defined in RCW 36.70A.030, or are located within a master planned resort;

(e) Are not essential public facilities, as defined in RCW 36.70A.200; and

(f) Are consistent with a comprehensive plan adopted under chapter 36.70A RCW.

(2) A GMA county/city shall limit planned actions to certain types of development or to specific geographical

areas that are less extensive than the jurisdictional boundaries of the GMA county/city.

(3) A GMA county/city may limit a planned action to a time period identified in the EIS or the designating ordinance or resolution adopted under WAC 197-11-168.

**AMENDATORY SECTION** (Amending WSR 95-07-023, filed 3/6/95, effective 4/6/95)

**WAC 197-11-235 SEPA/GMA integration documents.** (1) "Integrating documents." Formal SEPA documents may be prepared as companion documents to accompany proposed GMA actions or may be integrated into the documentation of GMA actions. This section clarifies how WAC 197-11-640 (all SEPA documents) and WAC 197-11-425 through 197-11-442 (EISs) apply to integrated SEPA/GMA documents. The overriding consideration is the quality of information and analysis at the appropriate scope and level of detail for the particular GMA document, and not the format, length or bulk of the document.

(2) "Document format."

(a) There is no standard format for an integrated GMA document. For example an integrated comprehensive plan may look more like a plan preceded by an environmental summary (see WAC 197-11-235(5)), in contrast to a format described in WAC 197-11-430. Any separately bound supporting documents shall be clearly identified in the integrated document.

(b) An integrated GMA document is not required to contain a separate section on affected environment, significant impacts, and mitigation measures under WAC 197-11-440(6), as long as this information is summarized as required by this section, and the basis for this information can be readily found in the document and the supporting record.

(3) "Integrated non-EIS documents."

(a) If a proposed GMA action is not likely to have a significant adverse environmental impact, an integrated GMA document shall be prepared that combines the formal SEPA document (such as an environmental checklist/DNS, a notice of adoption or addendum) with the GMA document. The provisions of WAC 197-11-235 (1) and (2) apply to these integrated documents.

(b) If an environmental checklist is used and a DNS issued, only Parts A (which serves as a fact sheet), C (responsible official's signature), and D (nonproject checklist) need be prepared, plus an environmental summary as specified in WAC 197-11-235(5). Part D and the summary may be combined.

(c) If an addendum is to accompany or be incorporated into an integrated GMA document, it shall contain the information specified in WAC 197-11-235(5) for an environmental summary.

(4) "Plan/EIS documents." Because these documents need to contain sufficient environmental analysis for GMA actions, the same documents that meet GMA planning needs should constitute the SEPA documents for GMA actions and should provide a basis for future decisions on projects. An integrated document will constitute the necessary formal SEPA document, if accompanied by the following (as further specified by subsections (5) through (7) of this section):

- (a) Environmental summary and fact sheet;
  - (b) Concise analysis of alternatives;
  - (c) Comments and responses; and
  - (d) Appropriate technical and other materials.
- (5) "Environmental summary and fact sheet."

(a) The environmental summary includes the contents required in WAC 197-11-440(4). It should emphasize the major conclusions, significant areas of controversy and uncertainty, if any, and the issues to be resolved, including the environmental choices to be made and the effectiveness of mitigation measures. The summary is not to be a summary of the GMA action.

(b) The summary should highlight from an environmental perspective the main options that would be preserved or foreclosed by the proposed GMA action. It should reflect SEPA's substantive policies and focus on any significant irreversible or irretrievable commitments of natural resources that would be likely to harm long-term environmental productivity, taking into account cumulative impacts. A summary of the principal environmental impacts may be presented in chart or matrix form, summarizing the relevant elements of the environment and impact assessment required by WAC 197-11-440 (6)(b) through (e). The summary may discuss nonenvironmental factors and should do so if relevant to resolving issues concerning the main environmental choices facing decision makers.

(c) The summary should be no longer than necessary (generally fifteen to thirty pages for a plan/EIS, less for other integrated documents) and include tables or graphics to assist readability.

(d) At a minimum the fact sheet shall contain the information required in WAC 197-11-440(2). The fact sheet shall precede the summary in the integrated GMA document.

- (6) "Concise analysis of alternatives."

(a) This analysis focuses on a comparative evaluation of the environmental consequences of the principal alternative courses of action that are or have been under consideration in the GMA planning process, as provided by WAC 197-11-440(5). The alternatives analysis shall evaluate the proposed GMA action compared to the principal alternative concepts and plan elements or regulatory options that were considered. This analysis allows decision makers, other agencies and the public to determine if the proposed GMA action can or should be revised before adoption to avoid or reduce environmental or other impacts. These alternatives may be:

- (i) Those which are actively being considered; or
- (ii) Those considered and screened earlier as part of a public GMA planning process.

(b) Descriptive material on the features of the alternatives (in contrast to comparing their impacts) should be kept to the minimum necessary to understand the comparative evaluation. If more description is necessary, it should be cited or located in the supporting record. Depending on the scope of the GMA action, the text of the alternatives analysis should be less than forty pages.

(7) "Comments and responses." The inclusion of comments and responses is not required for a draft integrated GMA document. For a final integrated document, comments (or a summary of comments) shall be compiled and response prepared as provided in WAC 197-11-560(3). A jurisdiction

may include comments (or a summary of comments) received during the scoping process or on preliminary documents, as well as general or specific responses to these comments if any have been prepared, with the integrated GMA document on a proposed GMA action. If this approach is not used, these preliminary comments shall be included in the supporting record.

- (8) "Supporting record, analyses, and materials."

(a) The integrated GMA document shall contain a list of the principal analytical documents and other materials (such as meeting minutes, maps, models, tapes or videos) that have been prepared, received, or used in developing the GMA action (see WAC 197-11-090). These materials shall be considered to be incorporated by reference under SEPA and part of the supporting record for SEPA compliance, and their contents need not be further described as required in WAC 197-11-635. Annotated lists are encouraged, but not required, to assist current and future reviewers.

(b) Materials in the supporting record should enable agencies and members of the public to identify and review the planning basis for the conclusions and analysis presented in the integrated GMA document as provided in the "procedural criteria" for preparing plan documents.

AMENDATORY SECTION (Amending WSR 97-21-030, filed 10/10/97, effective 11/10/97)

**WAC 197-11-238 SEPA/GMA integration monitoring.** Monitoring information is important to maintain the usefulness of the environmental analysis in plans and development regulations for project-level review and to update plans under chapter 36.70A RCW. GMA counties/cities are encouraged to establish a process for monitoring the cumulative impacts of permit decisions and conditions, and to use that data to update the information about existing conditions for the built and natural environment. If a monitoring process is developed, it should be established at the time information on existing conditions is developed. Annual or periodic reports summarizing the data and documenting trends are encouraged.

AMENDATORY SECTION (Amending WSR 97-21-030, filed 10/10/97, effective 11/10/97)

**WAC 197-11-508 SEPA register.** (1) The department of ecology shall prepare a SEPA register (~~at least weekly~~) that is web-based and updated daily, giving notice of all environmental documents required to be sent to the department of ecology under these rules, specifically:

- (a) DNSs under WAC 197-11-340(2);
- (b) DSs (scoping notices) under WAC 197-11-408;
- (c) EISs under WAC 197-11-455, 197-11-460, 197-11-620, and 197-11-630;
- (d) Notices of action under RCW 43.21C.080 and 43.21C.087; and
- (e) Notices in the optional DNS process under WAC 197-11-355 (2)(d)(i) and (5).

(2) All agencies shall submit the environmental documents listed in subsection (1) of this section to the department promptly and in accordance with procedures established by the department.



(3) Agencies are encouraged to refer to the SEPA register for notice of SEPA documents which may affect them.

(4) The department:

(a) Shall establish the method for distributing the SEPA register, which may include listing on internet, publishing and mailing to interested persons, or any other method deemed appropriate by the department(-);

(b) May establish a reasonable format for the SEPA register;

(c) May charge a reasonable fee for the SEPA register as allowed by law, in at least the amount allowed by chapter 42.17 RCW, from agencies, members of the public, and interested organizations.

(5) Members of the public, citizen and community groups, and educational institutions are encouraged to refer to the SEPA register for notice of SEPA actions which may affect them.

**AMENDATORY SECTION** (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-510 Public notice.** (1) When these rules require notice to be given under this section, the lead agency must use reasonable methods to inform the public and other agencies that an environmental document is being prepared or is available and that public hearing(s), if any, will be held. The agency may use its existing notice procedures.

Examples of reasonable methods to inform the public are:

(a) Posting the property, for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; (~~and/or~~)

(f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals or subject areas); ~~and/or~~

(g) Mailing or e-mailing notice to any person, group or agency who has requested notice.

(2) Each agency shall specify its method of public notice in its SEPA procedures, WAC 197-11-904 and 197-11-906. If an agency does not specify its method of public notice or does not adopt SEPA procedures, the agency shall use methods (a) and (b) in subsection (1).

(3) Documents which are required to be sent to the department of ecology under these rules will be published in the SEPA register, which will also constitute a form of public notice. However, publication in the SEPA register shall not, in itself, meet compliance with this section.

**AMENDATORY SECTION** (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-610 Use of NEPA documents.** (1) An agency may adopt any environmental analysis prepared

under the National Environmental Policy Act (NEPA) by following WAC 197-11-600 and 197-11-630.

(2) A NEPA environmental assessment (EA) or documented categorical exclusion may be adopted to satisfy requirements for a determination of nonsignificance (~~(or EIS)~~), if the requirements of WAC 197-11-340, 197-11-600, and 197-11-630 are met and elements of the environment in WAC 197-11-444 are adequately addressed.

(3) An agency may adopt a NEPA EIS as a substitute for preparing a SEPA EIS if:

(a) The requirements of WAC 197-11-360, 197-11-600, and 197-11-630 are met (in which case the procedures in Parts Three (~~through~~), Four, and Five of these rules for preparing an EIS shall not apply); and

(b) The federal EA or EIS is not found inadequate: (i) By a court; (ii) by the council on environmental quality (CEQ) (or is at issue in a predecision referral to CEQ) under the NEPA regulations; or (iii) by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 42 U.S.C 1857.

(4) Subsequent use by another agency of a federal EIS, adopted under subsection (3) of this section, for the same (or substantially the same) proposal does not require adoption, unless the criteria in WAC 197-11-600(3) are met.

(5) If the lead agency has not held a public hearing within its jurisdiction to obtain comments on the adequacy of adopting a federal environmental document as a substitute for preparing a SEPA EIS, a public hearing for such comments shall be held if, within thirty days of circulating its statement of adoption, a written request is received from at least fifty persons who reside within the agency's jurisdiction or are adversely affected by the environmental impact of the proposal. The agency shall reconsider its adoption of the federal document in light of public hearing comments.

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

**AMENDATORY SECTION** (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-756 Lands covered by water.** (1) "Lands covered by water" means lands underlying the water areas of the state below the ordinary high water mark, including salt waters, tidal waters, estuarine waters, natural water courses, lakes, ponds, artificially impounded waters, (~~(marshes, and swamps)~~) and wetlands. As specified in Part Nine certain categorical exemptions do not apply (~~(to)~~) when a portion or all of a project or proposal is undertaken on lands covered by water(~~, as specified in Part Nine~~).

(2) Wetlands - Wetlands are defined as areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites including, but not

limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.

(3) "Lands covered by water" does not include adjacent lands and designated buffers above the ordinary high water mark.

**AMENDATORY SECTION** (Amending WSR 13-02-065, filed 12/28/12, effective 1/28/13)

**WAC 197-11-800 Categorical exemptions.** The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305.

Note: The statutory exemptions contained in chapter 43.21C RCW are not included in Part Nine. Chapter 43.21C RCW should be reviewed in determining whether a proposed action not listed as categorically exempt in Part Nine is exempt by statute from threshold determination and EIS requirements.

**(1) Minor new construction - Flexible thresholds.**

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question (~~except when a rezone or any license governing emissions to the air or discharges to water is required~~). To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency. The exemptions in this subsection apply except when the project:

(i) Is undertaken wholly or partly on lands covered by water;

(ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;

(iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or

(iv) Requires a land use decisions that is not exempt under WAC 197-11-800(6).

(b) The following types of construction shall be exempt (~~except when undertaken wholly or partly on lands covered by water~~):

(i) The construction or location of four detached single family residential units.

(ii) The construction or location of four multifamily residential units.

(iii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

(iv) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square

feet of gross floor area, and with associated parking facilities designed for twenty automobiles. This exemption includes (~~stand-alone~~) parking lots for twenty or fewer automobiles not associated with a structure.

(v) Any (~~landfill~~) fill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation (~~not associated with an exempt project in subsection (b)(i), (ii), (iii), or (iv); and any fill or excavation classified as a Class I, H, or III forest practice under RCW 76.09.050 or regulations thereunder~~) and any excavation, fill or grading necessary for an exempt project in (i), (ii), (iii), or (iv) of this subsection shall be exempt.

(c) Cities, towns or counties may raise the exempt levels up to the maximum specified in (d) of this subsection by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904). Separate maximum optional thresholds are established in (d) of this subsection applying to both incorporated areas and unincorporated urban growth areas in fully planning jurisdictions under RCW 36.70A.040; other unincorporated areas in fully planning counties; and jurisdictions in all other counties. Agencies may adopt the maximum level or a level between the minimum and maximum level. An agency may adopt a system of several exempt levels ((f)), such as different levels for different geographic areas((g)), and mixed use projects.

At a minimum, the following process shall be met in order to raise the exempt levels.

(i) Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted. The requirements may be addressed in specific adopted development regulations, and applicable state and federal regulations.

(ii) Description in the findings or other appropriate section of the adopting ordinance or resolution of the locally established project-level public comment opportunities that are provided for proposals included in these increased exemption levels.

(iii) Before adopting the ordinance or resolution containing the proposed new exemption levels, the local government shall provide a minimum of (~~twenty-one~~) sixty days notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment.

(iv) For cultural and historic resources (per WAC 197-11-444), documentation that environmental analysis, protection and mitigation have been adequately addressed for the development exempted shall include a minimum of the following:

- Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments.

- Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44, 27.53, 68.50, and 68.60 RCW.

• Local development regulations that include at minimum preproject cultural resource review where warranted, and standard inadvertent discovery language (SIDL) for all projects.

(d) The maximum exemption levels applicable to (c) of this subsection are:

Project types	Fully planning GMA counties		All other counties
	Incorporated and unincorporated UGA	Other unincorporated areas	Incorporated and unincorporated areas
Single family residential	30 units	20 units	20 units
Multifamily residential	60 units	25 units	25 units
Barn, loafing shed, farm equipment storage, produce storage or packing structure	40,000 square feet	40,000 square feet	40,000 square feet
Office, school, commercial, recreational, service, storage building, parking facilities	30,000 square feet and 90 parking spaces	12,000 square feet and 40 parking spaces	12,000 square feet and 40 parking spaces
<del>((Landfill))</del> <u>Fill or excavation</u>	1,000 cubic yards	1,000 cubic yards	1,000 cubic yards

(2)(a) **Other minor new construction.** The following types of construction shall be exempt except ~~((where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any license governing emissions to the air or discharges to water is required))~~ when the project:

~~((a))~~ (i) Is undertaken wholly or partly on lands covered by water:

(ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383; or

(iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8):

(iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The construction or designation of bus stops, loading zones, shelters, access facilities and pull-out lanes for taxis, transit and school vehicles.

~~((b))~~ (c) The construction and/or installation of commercial on-premise signs, and public signs and signals.

~~((c))~~ (d) The construction or installation of minor road and street improvements by any agency or private party that include the following:

(i) Safety structures and equipment: Such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators~~((:))~~;

(ii) Transportation corridor landscaping (including the application of state of Washington ~~((state department of agriculture))~~ approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660~~((:))~~;

(iii) Temporary traffic controls and detours~~((:))~~;

(iv) Correction of substandard curves and intersections within existing rights of way, widening of a highway by less

than a single lane width where capacity is not significantly increased and no new right of way is required~~((:))~~;

(v) Adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required~~((:))~~;

(vi) Channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation~~((:))~~;

~~((vii))~~ (vii) Installation of catch basins and culverts~~((and))~~ for the purposes of road and street improvements;

(viii) Reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders~~((:))~~ where capacity is not increased and no new right of way is required;

(ix) Addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.

~~((d))~~ (e) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto.

~~((e))~~ (f) Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class.

~~((f))~~ (g) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance such as listing in a historic register.

~~((g))~~ (h) The installation or removal of impervious underground or above-ground tanks, having a capacity of 10,000 gallons or less except on agricultural and industrial lands. On agricultural and industrial lands, the installation or removal of impervious underground or above-ground tanks, having a total capacity of 60,000 gallons or less.

~~((h))~~ (i) The vacation of streets or roads.

~~((j))~~ (i) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

~~((j))~~ (k) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(l) The installation of accessory solar energy generation equipment on or attached to existing structures and facilities whereby the existing footprint and size of the building is not increased.

**(3) Repair, remodeling and maintenance activities.** The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, recreation, and transportation facilities involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:

(a) Dredging of over fifty cubic yards of material;

(b) Reconstruction~~((/))~~ or maintenance of groins and similar shoreline protection structures; ~~((or))~~

(c) Replacement of utility cables that must be buried under the surface of the bedlands~~((:))~~; or

(d) Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

**(4) Water rights.** Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of groundwater, for any purpose. The exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pump house reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation.

**(5) Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

(a) The purchase or acquisition of any right to real property.

(b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to ~~((an))~~ a specific designated and authorized public use approved by the public landowner of the property related to the use of land by the public.

~~((The lease of real property))~~ Leasing, granting an easement, or otherwise authorizing when the use of ~~((the))~~ real property for the term of the ~~((lease))~~ agreement will remain essentially the same as the existing use, or when the use under the lease, easement or other authorization is otherwise exempted by this chapter.

~~((Minor))~~ **Land use decisions.** The following land use decisions shall be exempt:

(a) Land use decisions for exempt projects, except that rezones must comply with (c) of this subsection.

(b) Other land use decisions not qualified for exemption under subsection (a) (such as a home occupation or change of use) are exempt provided:

(i) The authorized activities will be conducted within an existing building or facility qualifying for exemption under WAC 197-11-800 (1) and (2); and

(ii) The activities will not change the character of the building or facility in a way that would remove it from an exempt class.

(c) Where an exempt project requires a rezone, the rezone is exempt only if:

(i) The project is in an urban growth area in a city or county planning under RCW 36.70A.040;

(ii) The proposed rezone is consistent with and does not require an amendment to the comprehensive plan; and

(iii) The applicable comprehensive plan was previously subjected to environmental review and analysis through an EIS under the requirements of this chapter prior to adoption, and the EIS adequately addressed the environmental impacts of the rezone.

(d) Except upon lands covered by water, the approval of ~~((short plats or))~~ short subdivisions pursuant to the procedures required by RCW 58.17.060, ~~((but not including further))~~ and short subdivisions ~~((or short platting within a plat or subdivision previously exempted under this subsection.~~

~~(b) Granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.~~

~~(e) Classifications of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW)) within the original short subdivision boundaries provided the cumulative divisions do not exceed the total lots allowed to be created under RCW 58.17.020. This exemption includes binding site plans authorized by RCW 58.17.035 up to the same number of lots allowed by the jurisdiction as a short subdivision.~~

(e) Granting of variance based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.

**(7) Open burning.** Opening burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall not be exempt.

**(8) Clean Air Act.** The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

**(9) Water quality certifications.** The granting or denial of water quality certifications under the Federal Clean Water Act (Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1341) shall be exempt.

**(10) Activities of the state legislature.** All actions of the state legislature are exempted. ~~((This subsection does not exempt the proposing of legislation by an agency (WAC 197-11-704).))~~

(11) **Judicial activity.** The following shall be exempt:

(a) All adjudicatory actions of the judicial branch.

(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezoning, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(12) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:

(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(b) All inspections conducted by an agency of either private or public property for any purpose.

(c) All activities of fire departments and law enforcement agencies except physical construction activity.

(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(13) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.

(c) All licenses to operate or engage in amusement devices and rides and entertainment activities(§) including, but not limited to, cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for temporary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.

(d) All licenses to operate or engage in charitable or retail sales and service activities(§) including, but not limited to, peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.

(e) All licenses for private security services(§) including, but not limited to, detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.

(f) All licenses for vehicles for-hire and other vehicle related activities including, but not limited to, taxicabs, ambulances, and tow trucks: Provided, That regulation of

common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(g) All licenses for food or drink services, sales, and distribution(§) including, but not limited to, restaurants, liquor, and meat.

(h) All animal control licenses(§) including, but not limited to, pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.

(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

(14) **Activities of agencies.** The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: Provided, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection.

(k) Classification of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(15) **Financial assistance grants.** The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project. This exemption includes agencies taking nonproject actions that are necessary to apply for federal or other financial assistance.

(16) **Local improvement districts and special purpose districts.** The formation of local improvement districts and special purpose districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 197-11-800 and 197-11-880. A special district or special purpose district is a local government entity designated by the Revised Code of Washington (RCW) and is not a city, town, township, or county.

(17) **Information collection and research.** Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal. (Also see WAC 197-11-070.)

(18) **Acceptance of filings.** The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

(19) **Procedural actions.** The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

(a) Relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment shall be exempt.

(b) Text amendments resulting in no substantive changes respecting use or modification of the environment.

(c) Agency SEPA procedures (~~shall be exempt~~).

(20) (~~Building codes. The adoption by ordinance of all codes as required by the state Building Code Act (chapter 19.27 RCW-.)~~) **Reserved.**

(21) **Adoption of noise ordinances.** The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter 70.107 RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations (~~(and thus requires approval of the department of ecology under RCW 70.107.060(4))~~), SEPA compliance may be limited to those items which differ from state regulations.

(22) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

(23) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines (~~eight~~) twelve inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (up to and including 115,000 volts); within existing rights of way or developed utility corridors, all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 115,000 volts or less; and the under-

grounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station vault, pipe, or well: (~~Provided, That~~) Additional appropriations of water are not exempt by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided, ((That)) the chemicals used are approved by ((the)) Washington state ((department of agriculture)) and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights of way by utilities.

(24) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.

(b) Licenses or approvals to remove firewood.

(c) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.

(d) Issuance of leases for Christmas tree harvesting or brush picking.

(e) Issuance of leases for school sites.

(f) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

(g) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.

(h) Periodic use of chemical or mechanical means to maintain public park and recreational land: Provided, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(i) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.

(j) Establishment of natural area preserves to be used for scientific research and education and for the protection of rare flora and fauna, under the procedures of chapter 79.70 RCW.

(25) (~~Personal~~) **Wireless service facilities.**

(a) The siting of (~~personal~~) wireless service facilities are exempt if (~~the facility~~):

(i) (~~Is a microcell and is to be attached to an existing structure that is not a residence or school and does not contain a residence or a school;~~

(ii) ~~Includes personal wireless service antennas, other than a microcell, and is to be attached to an existing structure (that may be an existing tower) that is not a residence or~~

school and does not contain a residence or school, and the existing structure to which it is to be attached is located in a commercial, industrial, manufacturing, forest, or agriculture zone; or

(iii) The collocation of new equipment, removal of equipment, or replacement of existing equipment on existing or replacement structures that does not substantially change the physical dimensions of such structures; or

(ii) The siting project involves constructing a ((personal)) wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.

(b) For the purposes of this subsection:

(i) "((Personal)) Wireless services" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(ii) "((Personal)) Wireless service facilities" means facilities for the provision of ((personal)) wireless services.

(iii) "((Microcell" means a wireless communication facility consisting of an antenna that is either:

(A) Four feet in height and with an area of not more than five hundred eighty square inches; or

(B) If a tubular antenna, no more than four inches in diameter and no more than six feet in length) "Collocation" means the mounting or installation of equipment on an existing tower, building, structure for the purposes of either transmitting or receiving, or both, radio frequency signals for communication purposes.

(iv) "Existing structure" means any existing tower, pole, building, or other structure capable of supporting wireless service facilities.

(v) "Substantially change the physical dimensions" means:

(A) The mounting of equipment on a structure that would increase the height of the structure by more than ten percent, or twenty feet, whichever is greater; or

(B) The mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater.

(c) This exemption does not apply to projects within a critical area designated under GMA (RCW 36.70A.060).

AMENDATORY SECTION (Amending WSR 03-16-067, filed 8/1/03, effective 9/1/03)

**WAC 197-11-820 Department of licensing.** All licenses ~~((required under programs administered by the department of licensing as of December 12, 1975)) issued by the department of licensing~~ are exempted, except the following:

(1) Camping club promotional permits under chapter 19.105 RCW.

(2) Motor vehicle wrecker licenses under chapter 46.80 RCW; WAC 197-11-800 (13)(i) shall apply to allow possible

exemption of renewals of camping club promotional permits and motor vehicle wrecker licenses.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-825 Department of labor and industries.** All licenses ~~((required under programs administered by the department of labor and industries as of December 12, 1975)) issued by the department of labor and industries~~ are exempted, except the issuance of any license for the manufacture of explosives or the adoption or amendment by the department of any regulations incorporating general standards respecting the issuance of licenses authorizing the storage of explosives under chapter 70.74 RCW. The adoption of any industrial health or safety regulations containing noise standards shall be considered a major action under this chapter.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-830 Department of natural resources.** The following actions and licenses of the department of natural resources are exempted:

(1) Forest closures, shutdowns and permit suspensions due to extreme unusual fire hazards.

(2) Operating permits to use power equipment on forest land.

(3) Permits to use fuse on forest land.

(4) Log patrol licenses.

(5) Permits for drilling for which no public hearing is required under RCW 79.76.070 (geothermal test drilling).

(6) Permits for the dumping of forest debris and wood waste in forested areas.

(7) Those sales of timber from public lands that the department of natural resources determines, by rules adopted pursuant to RCW 43.21C.120 do not have potential for a substantial impact on the environment.

(8) Except on aquatic lands under state control, leases for mineral prospecting under RCW 79.01.616 or 79.01.652, but not including issuance of subsequent contracts for mining.

(9) Sales of rock from public lands involving rock pits less than three acres in size that are used for activities regulated under a forest practices application that is exempt under RCW 43.21C.037 and sales of rock from public lands for uses not associated with timber management that do not exceed the total volume threshold for excavation exempted under WAC 197-11-800 (1)(v).

AMENDATORY SECTION (Amending WSR 03-16-067, filed 8/1/03, effective 9/1/03)

**WAC 197-11-835 Department of ((fisheries)) fish and wildlife.** The following activities of the department of ~~((fisheries)) fish and wildlife~~ are exempted:

(1) The establishment of seasons, catch limits or geographical areas for fishing or shellfish removal.

(2) All hydraulic project approvals (RCW 75.20.100) for activities incidental to a Class I, II, III forest practice as defined in RCW 76.09.050 or regulations thereunder.

(3) Hydraulic project approvals where there is no other agency with jurisdiction (besides the department of ~~((game))~~ fish and wildlife) requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials or involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels which have been naturally abandoned within the twelve months previous to the hydraulic permit application.

(4) All clam farm licenses and oyster farm licenses, except where cultural practices include structures occupying the water column or where a hatchery or other physical facility is proposed for construction on adjoining uplands.

(5) All other licenses (other than those excepted in (2) and (3) above) authorized to be issued by the department as of December 12, 1975 except the following:

(a) Fish farming license, or other licenses allowing the cultivation of aquatic animals for commercial purposes;

(b) Licenses for the mechanical and/or hydraulic removal of clams, including geoducks; and(ç))

(c) Any license authorizing the discharge of explosives in water. WAC 197-11-800 (13)(i) shall apply to allow possible exemption of renewals of the above licenses.

(6) The routine release of hatchery fish or the reintroduction of endemic or native species into their historical habitat where only minor documented effects on other species will occur.

(7) The establishment of hunting, trapping or fishing seasons, bag or catch limits, and geographical areas where such activities are permitted.

(8) The issuance of falconry permits.

(9) The issuance of all hunting or fishing licenses, permits, or tags.

(10) Artificial wildlife feeding.

(11) The issuance of scientific collector permits.

(12) Minor repair work to be done by hand tools. Examples include:

(a) Maintenance of fish screen or intake structures; or

(b) Silt and debris removal from boat launches, docks, and piers.

(13) Collection of fish and wildlife for research.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-845 Department of social and health services and department of health.** All department of social and health services and department of health actions (~~((under programs administered by the department of social and health services as of December 12, 1975.))~~) are exempted, except the following:

(1) The adoption or amendment by the department of any regulations incorporating general standards for issuance of licenses authorizing the possession, use and transfer of radioactive source material under RCW 70.98.080, except that the issuance, revocation or suspension of individual licenses thereto shall be exempt. However, licenses to operate low level burial facilities or licenses to operate or expand beyond design capacity, mineral processing facilities or their tailings areas whose products or byproducts have concentrations of

naturally occurring radioactive materials in excess of exempt concentrations, as specified in WAC 402-20-250, shall not be exempt.

(2) The approval of a comprehensive plan for public water supply systems servicing one thousand or more units under WAC 248-54-065.

(3) The approval of engineering reports or plans and specifications under WAC 248-54-085 and 248-54-095, for all surface water source development, all water system storage facilities greater than one-half million gallons, new transmission lines longer than one thousand feet located in new rights of way and major extensions to existing water distribution systems.

(4) The approval of an application for a certificate of need under RCW 70.38.120 for construction of a new hospital or medical facility or for major additions to existing service capacity of such institutions.

(5) The approval of an application for any system of sewerage and/or water general plan or amendments under RCW 36.94.100.

(6) The approval of any plans and specifications for new sewage treatment works or major extensions to existing sewer treatment works submitted to the department under WAC 248-92-040.

(7) The construction of any building, facility or other installation not exempt by WAC 197-11-800 for the purpose of housing department personnel, or fulfilling statutorily directed or authorized functions (~~((e.g.))~~ for example, prisons).

(8) The approval of any final plans for construction of a nursing home pursuant to WAC 248-14-100, construction of a private psychiatric hospital pursuant to WAC 248-22-005 or construction of an alcoholism treatment center pursuant to WAC 248-22-510.

AMENDATORY SECTION (Amending WSR 03-16-067, filed 8/1/03, effective 9/1/03)

**WAC 197-11-850 Department of agriculture.** All department of agriculture actions (~~((under programs administered by the department of agriculture as of December 12, 1975.))~~) are exempted, except for the following:

(1) The approval of any application for a commercial registered feedlot, quarantined registered feedlot under chapter 16.36 RCW, or chapters 16-28 and 16-30 WAC.

(2) The issuance or amendment of any regulation respecting restricted-use pesticides under chapter 15.58 RCW that would have the effect of allowing the use of a pesticide previously prohibited by Washington state.

(3) The removal of any pesticide from the list of restricted-use pesticides established in WAC 16-228-155 so as to permit sale of such pesticides to home and garden users, unless the pesticide is no longer manufactured and is not available.

(4) The removal of any pesticide from the list of highly toxic and restricted-use pesticides established under WAC 16-228-165 so as to authorize sale of such pesticides to persons not holding an annual user permit, an applicator certificate, or an applicator operator license, unless the pesticide is no longer manufactured and is not available.



(5) The removal of any pesticide from the category of highly toxic pesticide formulations established in WAC 16-228-165 so as to permit the sale of such pesticides by persons not possessing a pesticide dealer's license, unless the pesticide is no longer manufactured and is not available.

(6) The approval of any use of the pesticide DDT or DDD except for those uses approved by the centers for disease control of the United States Department of Health and Human Services (such as control of rabid bats).

(7) The issuance of a license to operate a public livestock market under RCW 16.65.030.

(8) The provisions of WAC 197-11-800 (13)(i) shall apply to allow possible exemption of renewals of the licenses in (1) through (7) above.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-860 Department of transportation.** The following activities of the department of transportation shall be exempt:

(1) Approval of the annual highway safety work program involving the highway-related safety standards pursuant to 23 U.S.C. 402;

(2) Issuance of road approach permits and right of way rental agreements;

(3) Establishment and changing of speed limits of 55 miles per hour or less;

(4) Revisions of existing access control involving a single property owner;

(5) Issuance of a "motorist information signing permit," granting a private business person the privilege of having a sign on highway right of way which informs the public of the availability of his or her services;

(6) Issuance of permits for special units relative to state highways;

(7) Issuance of permits for the movement of over-legal size and weight vehicles on state highways;

(8) Issuance of encroachment permits for road approaches, fences and landfills on highway right of way; ~~(and)~~

(9) Issuance of permits for utility occupancy of highway rights of way for use for distribution (as opposed to transmission)~~(-); and~~

(10) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation, as long as the action:

(a) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements; and

(b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-865 Utilities and transportation commission.** All utilities and transportation commission actions ~~((of the utilities and transportation commission under statutes administered as of December 12, 1975;))~~ are exempted, except the following:

(1) Issuance of common carrier motor freight authority under chapter 81.80 RCW that would authorize a new service, or extend an existing transportation service in the fields of petroleum and petroleum products in bulk in tank type vehicles, radioactive substances, explosives, or corrosives;

(2) Authorization of the openings or closing of any highway/railroad grade crossing, or the direction of physical connection of the line of one railroad with that of another;

(3) Regulation of oil and gas pipelines under chapter 81.88 RCW; and

(4) The approval of utility and transportation rates where the funds realized as a result of such approved rates will or are intended to finance construction of a project, approval of which would not be otherwise exempt under WAC 197-11-800, and where at the time of such rate approval no responsible official of any state or federal agency has conducted the environmental analysis prescribed by this chapter or the appropriate provisions of NEPA, whichever is applicable.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-870 Department of commerce ~~((and economic development))~~.** The following activities of the department of commerce ~~((and economic development))~~ shall be exempt:

(1) The provisions of business consulting and advisory services that include tourist promotion under RCW 43.31.-050.

(2) The promotion and development of foreign trade under RCW 43.31.370.

(3) The furnishing of technical and information services under RCW 43.31.060.

(4) The provision of technical assistance to applicants for loans and aid and/or grants by the community of economic revitalization board under chapter 43.160 RCW.

(5) The conduct of research and economic analysis under RCW 43.31.070, including the provision of consulting and advisory services and recommendations to state and local officials, agencies and governmental bodies as authorized under RCW 43.31.160, 43.31.200 and 43.31.210.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-875 Other agencies.** Except for building construction (the majority of which is undertaken through the department of ~~((general administration))~~ enterprise services), all activities of the following state agencies ~~((under programs they administer as of December 12, 1975;))~~ are exempted:

(1) Office of the attorney general.

(2) Office of the auditor.

(3) Department of employment security.

(4) Office of the insurance commissioner (~~(and state fire marshal)~~).

(5) Department of (~~(personnel)~~) enterprise services.

(6) (~~(Department of printing-)~~) Office of financial management.

(7) Department of revenue.

(8) Office of the secretary of state.

(9) Office of the treasurer.

(10) Arts commission.

(11) Washington state patrol.

(12) (~~(Interagency committee for outdoor recreation-)~~)

Recreation and conservation office.

(13) (~~(Department of emergency services-)~~) Emergency management division.

(14) Department of (~~(general administration, division of banking and division of savings and loan associations-~~

~~(15) Forest practices appeals board)) financial institutions.~~

(~~(16)~~) (15) Public employees' retirement system.

(~~(17)~~) (16) Law enforcement officers' and firefighters' retirement board.

(~~(18)~~) (17) Board for volunteer (~~(fireman's retirement system board)~~) firefighters and reserve officers.

(~~(19)~~) (18) State department of retirement systems.

(~~(20) Teachers' retirement system board-~~

~~(21) Higher education personnel board-~~

~~(22) Commission for vocational education-~~

~~(23) State energy office-))~~

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-920 Agencies with environmental expertise.** The following agencies shall be regarded as possessing special expertise relating to those categories of the environment under which they are listed:

(1) Air quality.

(a) Department of ecology.

(b) Department of natural resources (only for burning in forest areas).

(c) Department of (~~(social and)~~) health (~~(services)~~).

(d) Regional air pollution control authority or agency.

(2) Water resources and water quality.

(a) Department of (~~(game)~~) fish and wildlife.

(b) Department of ecology.

(c) Department of natural resources (state-owned tidelands, shorelands, harbor areas or beds of navigable waters).

(d) Department of (~~(social and)~~) health (~~(services)~~) (public water supplies, sewer systems, shellfish habitats).

(~~(e) Department of fisheries-)~~)

(3) Hazardous and toxic substances (including radiation).

(a) Department of ecology.

(b) Department of (~~(social and)~~) health (~~(services)~~).

(c) Department of agriculture (foods or pesticides).

(d) Department of (~~(fisheries)~~) fish and wildlife (introduction into waters).

(~~(e) Department of game (introduction into waters-)~~)

(4) Solid and hazardous waste.

(a) Department of ecology.

(b) Department of (~~(fisheries)~~) fish and wildlife (dredge spoils).

(c) Department of (~~(social and)~~) health (~~(services)~~).

(~~(d) Department of game (dredge spoils-)~~)

(5) Fish and wildlife.

(a) Department of game.

(b) Department of fisheries.

(6) Natural resources development.

(a) (~~(Department of commerce and economic development-~~

~~(b))~~) Department of ecology.

(~~(e)~~) (b) Department of natural resources.

(~~(d)~~) (c) Department of (~~(fisheries)~~) fish and wildlife.

(~~(e) Department of game-)~~)

(7) Energy production, transmission and consumption.

(a) Department of ecology.

(b) Department of natural resources (geothermal, coal, uranium).

(c) (~~(State energy office-)~~) Department of commerce.

(d) Energy facility site evaluation council.

(e) Utilities and transportation commission.

(8) Land use and management.

(a) Department of commerce (~~(and economic development-)~~).

(b) Department of ecology.

(c) Department of (~~(fisheries)~~) fish and wildlife (affecting surface or marine waters).

(d) Department of natural resources (tidelands, shorelands, or state-owned or managed lands).

(~~(e) Planning and community affairs agency-~~

~~(f) Department of game-))~~

(9) Noise.

(a) Department of ecology.

(b) Department of (~~(social and)~~) health (~~(services)~~).

(10) Recreation.

(a) Department of commerce (~~(and economic development-)~~).

(b) Department of (~~(game)~~) fish and wildlife.

(c) (~~(Department of fisheries-~~

~~(d))~~) Parks and recreation commission.

(~~(e)~~) (d) Department of natural resources.

(11) Archaeological/historical.

(~~(a) Office-))~~ Department of archaeology and historic preservation.

(~~(b) Washington State University at Pullman (Washington archaeological research center-)~~)

(12) Transportation.

(a) Department of transportation.

(b) Utilities and transportation commission.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

**WAC 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.** (1)

For private projects which require licenses from more than one state agency, but require no license from a county/city, the lead agency shall be one of the state agencies requiring a license, based upon the following order of priority:

(a) Department of ecology.

- (b) Department of ~~((social and))~~ health ~~((services))~~.
- (c) Department of natural resources.
- (d) Department of ~~((fisheries))~~ fish and wildlife.
- (e) ~~((Department of game.~~
- ~~((Utilities and transportation commission.~~
- ~~((g))~~ (f) Department of ((motor vehicles)) licensing.
- ~~((h))~~ (g) Department of labor and industries.

(2) When none of the state agencies requiring a license is on the above list, the lead agency shall be the licensing agency that has the largest biennial appropriation.

(3) When, under subsection (1), an agency would be the lead agency solely because of its involvement in a program jointly administered with another agency, the other agency shall be designated the lead agency for proposals for which it is primarily responsible under agreements previously made between the two agencies for joint operation of the program.

AMENDATORY SECTION (Amending WSR 97-21-030, filed 10/10/97, effective 11/10/97)

**WAC 197-11-938 Lead agencies for specific proposals.** Notwithstanding the lead agency designation criteria contained in WAC 197-11-926 through 197-11-936, the lead agency for proposals within the areas listed below shall be as follows:

(1) For all governmental actions relating to energy facilities for which certification is required under chapter 80.50 RCW, the lead agency shall be the energy facility site evaluation council (EFSEC); however, for any public project requiring such certification and for which the study under RCW 80.50.175 will not be made, the lead agency shall be the agency initiating the project.

(2) For all private projects relating to the use of geothermal resources under chapter 79.76 RCW, the lead agency shall be the department of natural resources.

(3) For all private projects requiring a license or other approval from the oil and gas conservation committee under chapter 78.52 RCW, the lead agency shall be the department of natural resources; however, for projects under RCW 78.52.125, the EIS shall be prepared in accordance with that section.

(4) For private activity requiring a license or approval under the Forest Practices Act of 1974, chapter 76.09 RCW, the lead agency shall be either the department of natural resources or the city/county where the project is located, as set forth below:

(a) The interagency agreements authorized by WAC 222-50-030 between the department of natural resources and other governmental agencies may be used to identify SEPA lead agency status for forest practice applications. If used, this agreement shall meet the requirements for a lead agency agreement in WAC 197-11-942.

(b) If no interagency agreement exists, the SEPA lead agency determination shall be based on information in the environmental checklist required as part of the forest practice application requiring SEPA review. The applicant shall, as part of the checklist, submit all information on future plans for conversion, and shall identify any known future license requirements.

(c) For any proposal involving forest practices (i) ~~((on lands platted after January 1, 1960, (ii)))~~ on lands being converted to another use, or ~~((iii))~~ (ii) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, the applicable county or city is the lead agency if the county or city will require a license for the proposal. Upon receipt of a forest practice application and environmental checklist, natural resources shall determine lead agency for the proposal. If insufficient information is available to identify necessary permits, natural resources shall ask the applicant for additional information. If a permit is not required from the city/county, natural resources shall be lead agency. If a city/county permit is required, natural resources shall send copies of the environmental checklist and forest practice application together with the determination of the lead agency to the city/county.

(d) Upon receipt and review of the environmental checklist and forest practice application, the city/county shall within ten business days:

(i) Agree that a city/county license is required, either now or at a future point, and proceed with environmental review as lead agency.

(ii) Determine that a license is not required from the city/county, and notify natural resources that the city/county is not lead agency; or

(iii) Determine there is insufficient information in the environmental checklist to identify the need for a license, and either:

(A) Assume lead agency status and conduct appropriate environmental analysis for the total proposal;

(B) Request additional information from the applicant; or

(C) Notify natural resources of the specific additional information needed to determine permit requirements, who shall request the information from the applicant.

(5) For all private projects requiring a license or lease to use or affect state lands, the lead agency shall be the state agency managing the lands in question; however, this subsection shall not apply to the sale or lease of state-owned tidelands, harbor areas or beds of navigable waters, when such sale or lease is incidental to a larger project for which one or more licenses from other state or local agencies is required.

(6) For a pulp or paper mill or oil refinery not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology, when a National Pollutant Discharge Elimination System (NPDES) permit is required under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342).

(7) For proposals to construct a pipeline greater than six inches in diameter and fifty miles in length, used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof, or for the transportation of synthetic or natural gas under pressure not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(8) For proposals that will result in an impoundment of water with a water surface in excess of forty acres, the lead agency shall be the department of ecology.

(9) For proposals to construct facilities on a single site designed for, or capable of, storing a total of one million or

more gallons of any liquid fuel not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(10) For proposals to construct any new oil refinery, or an expansion of an existing refinery that shall increase capacity by ten thousand barrels per day or more not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(11) For proposed metal mining and milling operations regulated by chapter 78.56 RCW, except for uranium and thorium operations regulated under Title 70 RCW, the lead agency shall be the department of ecology.

(12) For proposals to construct, operate, or expand any uranium or thorium mill, any tailings areas generated by uranium or thorium milling or any low-level radioactive waste burial facilities, the lead agency shall be the department of social and health services.

**AMENDATORY SECTION** (Amending WSR 13-02-065, filed 12/28/12, effective 1/28/13)

**WAC 197-11-960 Environmental checklist.**

ENVIRONMENTAL CHECKLIST

*Purpose of checklist:*

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

*Instructions for applicants:*

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may

ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

*Use of checklist for nonproject proposals:*

For nonproject proposals complete this checklist and the supplemental sheet for nonproject actions (Part D). The lead agency may exclude any question for the environmental elements (Part B) which they determine do not contribute meaningfully to the analysis of the proposal.

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable:
2. Name of applicant:
3. Address and phone number of applicant and contact person:
4. Date checklist prepared:
5. Agency requesting checklist:
6. Proposed timing or schedule (including phasing, if applicable):
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.
9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.
10. List any government approvals or permits that will be needed for your proposal, if known.
11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)
12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

~~((TO BE COMPLETED BY APPLICANT EVALUATION FOR  
-AGENCY USE  
-ONLY~~

~~B. ENVIRONMENTAL ELEMENTS~~

~~1. Earth~~

- ~~a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other.....~~
- ~~b. What is the steepest slope on the site (approximate percent slope)?~~
- ~~e. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.~~
- ~~d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.~~
- ~~e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.~~
- ~~f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.~~
- ~~g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?~~
- ~~h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:~~

~~2. Air~~

- ~~a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.~~
- ~~b. Are there any offsite sources of emissions or odor that may affect your proposal? If so, generally describe.~~
- ~~e. Proposed measures to reduce or control emissions or other impacts to air, if any:~~

~~3. Water~~

- ~~a. Surface:~~
- ~~1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.~~
- ~~2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.~~
- ~~3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.~~

~~4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.~~

~~5) Does the proposal lie within a 100-year flood plain? If so, note location on the site plan.~~

~~6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.~~

~~b. Ground:~~

~~1) Will groundwater be withdrawn, or will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.~~

~~2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals...; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.~~

~~e. Water runoff (including storm water):~~

~~1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.~~

~~2) Could waste materials enter ground or surface waters? If so, generally describe.~~

- ~~d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:~~

~~4. Plants~~

- ~~a. Check or circle types of vegetation found on the site:~~
- ~~— Deciduous tree: Alder, maple, aspen, other~~
  - ~~— Evergreen tree: Fir, cedar, pine, other~~
  - ~~— Shrubs~~
  - ~~— Grass~~
  - ~~— Pasture~~
  - ~~— Crop or grain~~
  - ~~— Wet soil plants: Cattail, buttereup, bullrush, skunk cabbage, other~~
  - ~~— Water plants: Water lily, eelgrass, milfoil, other~~
  - ~~— Other types of vegetation~~
- ~~b. What kind and amount of vegetation will be removed or altered?~~
- ~~e. List threatened or endangered species known to be on or near the site.~~
- ~~d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:~~

**5. ~~Animals~~**

- a. ~~Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:  
     Birds: Hawk, heron, eagle, songbirds,  
     other: .....  
     Mammals: Deer, bear, elk, beaver,  
     other: .....  
     Fish: Bass, salmon, trout, herring, shellfish,  
     other: .....~~
- b. ~~List any threatened or endangered species known to be on or near the site.~~
- e. ~~Is the site part of a migration route? If so, explain.~~
- d. ~~Proposed measures to preserve or enhance wildlife, if any:~~

**6. ~~Energy and natural resources~~**

- a. ~~What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.~~
- b. ~~Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.~~
- e. ~~What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:~~

**7. ~~Environmental health~~**

- a. ~~Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe:  
     1) Describe special emergency services that might be required.  
     2) Proposed measures to reduce or control environmental health hazards, if any:~~
- b. ~~**Noise**  
     1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?  
     2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.  
     3) Proposed measures to reduce or control noise impacts, if any:~~

**8. ~~Land and shoreline use~~**

- a. ~~What is the current use of the site and adjacent properties?~~
- b. ~~Has the site been used for agriculture? If so, describe.~~
- e. ~~Describe any structures on the site.~~
- d. ~~Will any structures be demolished? If so, what?~~
- e. ~~What is the current zoning classification of the site?~~
- f. ~~What is the current comprehensive plan designation of the site?~~
- g. ~~If applicable, what is the current shoreline master program designation of the site?~~
- h. ~~Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.~~
- i. ~~Approximately how many people would reside or work in the completed project?~~
- j. ~~Approximately how many people would the completed project?~~
- k. ~~Proposed measures to avoid or reduce displacement impacts, if any:~~
- l. ~~Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:~~

**9. ~~Housing~~**

- a. ~~Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.~~
- b. ~~Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.~~
- e. ~~Proposed measures to reduce or control housing impacts, if any:~~

**10. ~~Aesthetics~~**

- a. ~~What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?~~
- b. ~~What views in the immediate vicinity would be altered or obstructed?~~
- e. ~~Proposed measures to reduce or control aesthetic impacts, if any:~~

**11. ~~Light and glare~~**

- a. ~~What type of light or glare will the proposal produce? What time of day would it mainly occur?~~
- b. ~~Could light or glare from the finished project be a safety hazard or interfere with views?~~
- e. ~~What existing offsite sources of light or glare may affect your proposal?~~
- d. ~~Proposed measures to reduce or control light and glare impacts, if any:~~

~~12. Recreation~~

- ~~a. What designated and informal recreational opportunities are in the immediate vicinity?~~
- ~~b. Would the proposed project displace any existing recreational uses? If so, describe.~~
- ~~c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:~~

~~13. Historic and cultural preservation~~

- ~~a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.~~
- ~~b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.~~
- ~~c. Proposed measures to reduce or control impacts, if any:~~

~~14. Transportation~~

- ~~a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.~~
- ~~b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?~~
- ~~c. How many parking spaces would the completed project have? How many would the project eliminate?~~
- ~~d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).~~
- ~~e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.~~
- ~~f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.~~
- ~~g. Proposed measures to reduce or control transportation impacts, if any:~~

~~15. Public services~~

- ~~a. Would the project result in an increased need for public services (for example: Fire protection, police protection, health care, schools, other)? If so, generally describe.~~
- ~~b. Proposed measures to reduce or control direct impacts on public services, if any:~~

~~16. Utilities~~

- ~~a. Circle utilities currently available at the site: Electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.~~
- ~~b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.~~

~~C. SIGNATURE~~

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

~~D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS~~

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

- ~~1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise? Proposed measures to avoid or reduce such increases are:~~
- ~~2. How would the proposal be likely to affect plants, animals, fish, or marine life? Proposed measures to protect or conserve plants, animals, fish, or marine life are:~~
- ~~3. How would the proposal be likely to deplete energy or natural resources? Proposed measures to protect or conserve energy and natural resources are:~~
- ~~4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, flood plains, or prime farmlands? Proposed measures to protect such resources or to avoid or reduce impacts are:~~

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?  
Proposed measures to avoid or reduce shoreline and land use impacts are:
6. How would the proposal be likely to increase demands on transportation or public services and utilities?  
Proposed measures to reduce or respond to such demand(s) are:
7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

## B. ENVIRONMENTAL ELEMENTS

### 1. Earth

a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other.....

b. What is the steepest slope on the site (approximate percent slope)?

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

e. Describe the purpose, type, total area, and approximate quantities of any filling or grading proposed. Indicate source of fill.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

### 2. Air

a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

b. Are there any offsite sources of emissions or odor that may affect your proposal? If so, generally describe.

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

### 3. Water

a. Surface:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

5) Does the proposal lie within a 100-year flood plain? If so, note location on the site plan.

6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

b. Ground:

1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well? Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals...; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

c. Water runoff (including storm water):

1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

2) Could waste materials enter ground or surface waters? If so, generally describe.

3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

d. Proposed measures to reduce or control surface, ground, runoff water, and drainage pattern impacts, if any:

### 4. Plants

- a. Check the types of vegetation found on the site:
- Deciduous tree: Alder, maple, aspen, other
  - Evergreen tree: Fir, cedar, pine, other
  - Shrubs
  - Grass
  - Pasture



- Crop or grain
- Orchards, vineyards or other permanent crops.
- Wet soil plants: Cattail, buttercup, bullrush, skunk cabbage, other
- Water plants: Water lily, eelgrass, milfoil, other
- Other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

c. List threatened or endangered species known to be on or near the site.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

e. List all noxious weeds and invasive species known to be on or near the site.

### **5. Animals**

a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site. Examples include:

Birds: Hawk, heron, eagle, songbirds, other:

Mammals: Deer, bear, elk, beaver, other:

Fish: Bass, salmon, trout, herring, shellfish, other:

b. List any threatened or endangered species known to be on or near the site.

c. Is the site part of a migration route? If so, explain.

d. Proposed measures to preserve or enhance wildlife, if any:

e. List any invasive animal species known to be on or near the site.

### **6. Energy and natural resources**

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

### **7. Environmental health**

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

1) Describe any known or possible contamination at the site from present or past uses.

2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development

or construction, or at any time during the operating life of the project.

4) Describe special emergency services that might be required.

5) Proposed measures to reduce or control environmental health hazards, if any:

### **b. Noise**

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

3) Proposed measures to reduce or control noise impacts, if any:

### **8. Land and shoreline use**

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to non-farm or nonforest use?

1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

c. Describe any structures on the site.

d. Will any structures be demolished? If so, what?

e. What is the current zoning classification of the site?

f. What is the current comprehensive plan designation of the site?

g. If applicable, what is the current shoreline master program designation of the site?

h. Has any part of the site been classified critical area by the city or county? If so, specify.

i. Approximately how many people would reside or work in the completed project?

j. Approximately how many people would the completed project displace?

k. Proposed measures to avoid or reduce displacement impacts, if any:

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

m. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any:

#### **9. Housing**

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

c. Proposed measures to reduce or control housing impacts, if any:

#### **10. Aesthetics**

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

b. What views in the immediate vicinity would be altered or obstructed?

c. Proposed measures to reduce or control aesthetic impacts, if any:

#### **11. Light and glare**

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

b. Could light or glare from the finished project be a safety hazard or interfere with views?

c. What existing offsite sources of light or glare may affect your proposal?

d. Proposed measures to reduce or control light and glare impacts, if any:

#### **12. Recreation**

a. What designated and informal recreational opportunities are in the immediate vicinity?

b. Would the proposed project displace any existing recreational uses? If so, describe.

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

#### **13. Historic and cultural preservation**

a. Are there any buildings or structures over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near the site? If so, specifically describe.

b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation. This may include human burials or old cemeteries. Is there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.

c. Describe the methods used to assess the potential impacts to cultural resources on or near the project site. Examples

include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

d. Proposed measures to avoid, minimize, or compensate for disturbance to resources. Please include plans for the above and any permits that may be required.

#### **14. Transportation**

a. Identify public streets and highways serving the site or affected geographic area, and describe proposed access to the existing street system. Show on site plans, if any.

b. Is site currently or affected geographic area served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

c. How many additional parking spaces would the completed project or nonproject proposal have? How many would the project or proposal eliminate?

d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks. What data or transportation models were used to make these estimates?

g. Will the proposal interfere, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

h. Proposed measures to reduce or control transportation impacts, if any:

#### **15. Public services**

a. Would the project result in an increased need for public services (for example: Fire protection, police protection, public transit health care, schools, other)? If so, generally describe.

b. Proposed measures to reduce or control direct impacts on public services, if any.

#### **16. Utilities**

a. Circle utilities currently available at the site: Electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: .....

Date Submitted: .....

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Proposed measures to avoid or reduce such increases are:

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

3. How would the proposal be likely to deplete energy or natural resources?

Proposed measures to protect or conserve energy and natural resources are:

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, flood plains, or prime farmlands?

Proposed measures to protect such resources or to avoid or reduce impacts are:

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Proposed measures to avoid or reduce shoreline and land use impacts are:

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

Proposed measures to reduce or respond to such demand(s) are:

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 197-11-840 Department of game.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 173-806-010 Authority.
- WAC 173-806-020 Purpose of this part and adoption by reference.
- WAC 173-806-030 Additional definitions.
- WAC 173-806-040 Designation of responsible official.
- WAC 173-806-050 Lead agency determination and responsibilities.
- WAC 173-806-053 Transfer of lead agency status to a state agency.
- WAC 173-806-058 Additional timing considerations.
- WAC 173-806-065 Purpose of this part and adoption by reference.
- WAC 173-806-070 Flexible thresholds for categorical exemptions.
- WAC 173-806-080 Use of exemptions.
- WAC 173-806-090 Environmental checklist.
- WAC 173-806-100 Mitigated DNS.
- WAC 173-806-110 Purpose of this part and adoption by reference.
- WAC 173-806-120 Preparation of EIS—Additional considerations.
- WAC 173-806-125 Additional elements to be covered in an EIS.
- WAC 173-806-128 Adoption by reference.
- WAC 173-806-130 Public notice.
- WAC 173-806-132 Public notice.
- WAC 173-806-140 Designation of official to perform consulted agency responsibilities for the city/county.
- WAC 173-806-150 Purpose of this part and adoption by reference.
- WAC 173-806-155 Purpose of this part and adoption by reference.
- WAC 173-806-160 Substantive authority.
- WAC 173-806-170 Appeals.
- WAC 173-806-173 Notice/statute of limitations.
- WAC 173-806-175 Purpose of this part and adoption by reference.
- WAC 173-806-180 Adoption by reference.

WAC 173-806-185	Purpose of this part and adoption by reference.
WAC 173-806-190	Critical areas.
WAC 173-806-200	Fees.
WAC 173-806-205	Effective date.
WAC 173-806-220	Severability.
WAC 173-806-230	Adoption by reference.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 197-06-010	Purpose.
WAC 197-06-020	Definitions.
WAC 197-06-030	Public records available.
WAC 197-06-040	Membership, officers, quorum, administrative offices, function.
WAC 197-06-050	Meetings.
WAC 197-06-060	Public records officer.
WAC 197-06-070	Office hours.
WAC 197-06-080	Requests for public records.
WAC 197-06-090	Copying.
WAC 197-06-100	Exemptions.
WAC 197-06-110	Review of denials of public records requests.
WAC 197-06-120	Protection of public records.
WAC 197-06-130	Records index.
WAC 197-06-140	Communications.
WAC 197-06-150	Adoption of form.
WAC 197-06-990	Form—Council on environmental policy—Request for public records.

**WSR 14-01-080  
PROPOSED RULES  
SEATTLE COMMUNITY COLLEGES**

[Filed December 16, 2013, 1:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-17-005.

Title of Rule and Other Identifying Information: Policy and procedures related to public records requests for the colleges, amending chapter 132F-168 WAC, Access to public records.

Hearing Location(s): Seattle Central Community College, Broadway Performance Hall 1625 Broadway, Seattle WA 98122, on February 3, 2014, at 3:30 - 4:30.

Date of Intended Adoption: March 13, 2014.

Submit Written Comments to: Amanda Davis Simpfenderfer, 1500 Harvard Avenue, Seattle, WA 98122, e-mail

wacinput@seattlecolleges.edu, fax (206) 934-3894, by February 3, 2014, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact wacinput@seattlecolleges.edu by January 30, 2014, (206) 934-3873.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update the access to public records WAC to reflect the requirements of the Public Records Act and to streamline the process for making public records request.

Reasons Supporting Proposal: The current WAC was last updated prior to the recodification of the Public Records Act in chapter 42.56 RCW. This revision will update the agency's rules to better comport with the act.

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, governmental.

Name of Agency Personnel Responsible for Drafting: Charles Sims, Seattle Community College District Office, (206) 934-4136; Implementation and Enforcement: Amanda Simpfenderfer, Seattle Community College District Office, (206) 934-3873.

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).

December 16, 2013

Jill Wakefield

Chancellor

**AMENDATORY SECTION** (Amending Order 16, filed 10/4/73)

**WAC 132F-168-010 Access to public records.** ((This chapter shall be known as Seattle Community College District rules on public records.)) (1) The Seattle Community College District VI is a community college district organized under RCW 28B.50.040. The Seattle Community College District VI's central office is located at 1500 Harvard Ave., Seattle, WA 98122. The Seattle Community College District VI has field offices at:

- 9600 College Way North, Seattle, WA 98103
- 6000 16th Ave. S.W., Seattle, WA 98103
- 1701 Broadway, Seattle, WA 98122
- 2120 South Jackson St., Seattle, WA 98144

(2) Any person wishing to request access to public records of Seattle Community College District VI, or seeking assistance in making such a request should contact the public records officer of the Seattle Community College District VI at:

Public Records Officer  
Seattle Community College District VI  
1500 Harvard Ave.  
Seattle, WA 98122  
206-934-3873  
SCCDPublicRecordsRequest@seattlecolleges.edu

(3) The public records officer will oversee compliance with the act but another Seattle Community College District VI staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee and the Seattle Community College District VI will provide the "fullest assistance" to requestors: create and maintain for use by the public and Seattle Community College District VI officials an index to public records of the Seattle Community College District VI; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the Seattle Community College District VI.

AMENDATORY SECTION (Amending Order 36, filed 11/21/77)

**WAC 132F-168-020 Purpose.** ((Seattle Community College District shall comply with the provisions of chapter 42.17 RCW, Disclosure Campaign finances Lobbying Records, while at the same time preserving the orderly operation of the Seattle Community College District and the privacy of the students and employees of the school.)) (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures Seattle Community College District VI will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Seattle Community College District VI and establish processes for both requestors and Seattle Community College District VI staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the Seattle Community College District VI will be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending Order 36, filed 11/21/77)

**WAC 132F-168-030 Request for document inspection.** ((~~(1) As defined by RCW 42.17.020(26), a public record "includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics." Public records are presumptively available for public access, except as restricted by WAC 132F-168-050. Any person wishing to inspect a public record shall submit Form 1, "request for inspection of public records" WAC 132F-168-100. Each request must be presented to a dean of instruction, dean of students, registrars, district director of employee relations and personnel, business managers, or to their secretaries during regular office hours of the school, as defined in WAC 132F-168-080.~~)

(2) The officer to whom the request is presented shall, by the close of the following business day: (a) Make the requested document available, or (b) state that such a document does not exist, or (c) ask for clarification of the document requested, or (d) deny access because the document is exempt from public inspection under WAC 132F-168-050. The action taken shall be marked on Form 1 and returned to the person submitting the form.)) (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the Seattle Community Colleges, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at either the district office or at a field office when those records are stored or maintained at that location. To make arrangements to inspect records at a Seattle Community College District field office, contact the public records officer to schedule the inspection.

(2) **Records index.** An index of public records is available for use by members of the public, including nonexempt final orders, declaratory orders, interpretive statements, and policy statements, as defined by RCW 42.56.070(5), issued after June 30, 1990, by the board of trustees of the district, the presidents of the colleges, or their designees.

Form. The index shall reference final orders, declaratory orders, interpretive statements, or policy statements by one or more of the following classifications: Date of implementation, organizational unit, or subject matter.

Requests for access to indexes. Information regarding public inspection of indexes, their location, and a schedule for revising and updating these indexes can be obtained by contacting the public records officer.

(3) **Organization of records.** The Seattle Community College District VI will maintain its records in a reasonably organized manner. Seattle Community College District VI will take reasonable actions to protect records from damage and disorganization. A requestor shall not take Seattle Community College District VI records from Seattle Community College District VI offices without the permission of the public records officer or designee. A variety of records are available on the Seattle Community College District VI web site at [www.seattlecolleges.edu](http://www.seattlecolleges.edu). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

**(4) Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the Seattle Community College District VI should make the request in writing on the Seattle Community College District VI request form, or by letter, fax, or e-mail addressed to the public records officer (SCCDPublicRecordsRequest@seattlecolleges.edu) and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 132F-168-060, standard photocopies will be provided at fifteen cents per page.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

AMENDATORY SECTION (Amending Order 36, filed 11/21/77)

**WAC 132F-168-040 ((Appeal-) Review of denials of public records.** ~~((1) If request is denied by the officer pursuant to WAC 132F-168-030, the person requesting the document may appeal to the appropriate campus president or to the district president. The appellant shall file Form 2, together with Form 1 as returned, with the secretary to the campus president or district president, during the day the appeal is returned, if returned prior to 3 p.m., or by 11 a.m. the following business day if returned after 3 p.m. A campus president or the district president shall answer the appeal by returning Form 2 to the person requesting the record before the end of the second business day following the original denial of inspection on Form 1, unless a later time is indicated in the form. In all cases, the person requesting the record shall be notified by the end of the second business day of the disposition of the request.~~

~~(2) If an appeal is filed after the time required in WAC 132F-168-040(1), then the return date shall be the end of the second business day following the filing of the appeal.~~

~~(3) The filing of a request and the return of Form 1 and Form 2 indicating disposition, is made by leaving the form with the secretary of the officer. The secretary of the officer shall mark the time and date of: (a) The receipt of the form; (b) the return of the form with disposition, and (c) the demand made for return by the person submitting the form. A request shall be deemed denied or an appeal denied only after the person filing the form has been notified by the secretary of the dean, personnel officer, president or district president. In all cases, the person shall be notified by the end of the second business day.~~

~~(4) Administrative remedies shall not be considered exhausted until the campus president or the district president has returned the appeal form by the close of the second business day. An appeal may then be made to the board at the next scheduled board meeting.))~~ **(1) Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

**(2) Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the appropriate vice-chancellor. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the Seattle Community College District VI's receipt of the petition, or within such other time as mutually agreed upon by the Seattle Community College District VI and the requestor.

**(3) Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the Seattle Community College District VI denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

**(4) Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

AMENDATORY SECTION (Amending Order 36, filed 11/21/77)

**WAC 132F-168-050 Exemptions.** ~~((1) Public access shall not be granted to documents exempt under RCW 42.17.310, "certain personal and other records exempt," unless the officer determines that disclosure would not affect any vital governmental interest. If the interest can be protected by deletion of personal references, access shall be granted following deletion of such material, and a reasonable time shall be allowed for deleting the material.~~

~~(2) Examination of individual files of Seattle Community College District students shall be in accordance with the provisions of district policy 310, student records and federal register, Part 99 – Privacy rights of parents and students.~~

~~(3) Individual files of applicants, employees, and officers of Seattle Community College District are available only to members of the faculty and staff of Seattle Community College District who are entrusted with the care and custody of the files, to supervisory personnel, and to the business staff for purposes necessary to carrying out their functions. The only information contained in the individual file of an employee which shall be available for public inspection shall be the name, status, salary and teaching duties of the employee. The employee, however, shall have full access to his personnel file as agreed upon in the employee organization contract.))~~ **The Public Records Act provides that a number of types of documents are exempt from public inspection**

and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by Seattle Community College District VI for inspection and copying:

(1) The Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g; the Uniform Trade Secrets Act, chapter 19.108 RCW; attorney-client privileged communications, RCW 5.60.060(2).

(2) Examination of individual files of Seattle Community College District students shall be in accordance with the provisions of district policy and procedure 380, student records.

(3) The Seattle Community College District VI is prohibited by statute from disclosing lists of individuals for commercial purposes.

(4) Pursuant to RCW 42.56.540, the Seattle Community College District VI reserves the right to seek to enjoin the examination of any specific record, the examination of which the district determines would clearly not be in the public interest and would substantially and irreparably damage any person or would substantially and irreparably damage vital governmental functions.

AMENDATORY SECTION (Amending Order 36, filed 11/21/77)

~~**WAC 132F-168-060 Copying.** ((Persons granted access to public records pursuant to Form 1 shall be allowed to obtain copies of such documents as they desire upon the payment of twenty-five cents per copy page. Copies of documents will be made by an authorized staff member of the Seattle Community College District on any available copier. Payment for copies shall be made to a cashier of the college who will issue a receipt which must be presented to the person in charge of the copying machine. The charge of twenty-five cents per copy page is the reasonable cost of paper and copying charges for Seattle Community College District.))~~

(1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain photocopies for fifteen cents per page. The district reserves the right to use outside vendors for large projects when an outside vendor can provide copies quicker or for less cost. The requestor will be required to pay the cost charged by the vendor.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The Seattle Community College District VI will not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of scanning existing Seattle Community College District VI paper or other nonelectronic records is four cents per page. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee. A state-

ment of the factors and the manner used to determine this charge is available from the public records officer.

If the requestor asks that the electronic records be provided on CD or DVD, the requestor will be charged the cost of the CD or DVD. If the electronic records are too large to be e-mailed through the Seattle Community College District e-mail system, they will be provided on CD or DVD, and the requestor will be charged accordingly.

(3) **Costs of mailing.** The Seattle Community College District VI may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by cash, check, or money order to the Seattle Community College District VI.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132F-168-075	Judicial review of agency action.
WAC 132F-168-080	Office hours.
WAC 132F-168-090	Sanctions.
WAC 132F-168-100	Request for inspection of public records—Form 1.
WAC 132F-168-110	Request for inspection of public records—Form 2.

#### **WSR 14-01-081**

#### **PROPOSED RULES**

#### **DEPARTMENT OF REVENUE**

[Filed December 16, 2013, 2:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-18-073.

Title of Rule and Other Identifying Information: WAC 458-20-255 Carbonated beverage syrup tax, this rule explains the carbonated beverage syrup tax imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the syrup sold in this state, for use in making carbonated beverages.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on January 29, 2014, at 10:00 a.m.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda. *Call-in* option can be provided upon request.

Date of Intended Adoption: February 4, 2014.

Submit Written Comments to: Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, by January 29, 2014.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514 no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing revisions to the rule to:

- Delete language in the introduction that has caused confusion now that beverage syrups are being sold to consumers for use in home soda machines.
- Add examples to the subsection "Taxation prohibited under the United States Constitution" to show where the legal incidence of the syrup tax falls when sales involve Indian country.

Reasons Supporting Proposal: Clarify when syrup tax is due.

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

Statute Being Implemented: Chapter 82.64 RCW.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

December 16, 2013  
Alan R. Lynn  
Assistant Director

AMENDATORY SECTION (Amending WSR 08-14-019, filed 6/20/08, effective 7/21/08)

**WAC 458-20-255 Carbonated beverage syrup tax.**

(1) **Introduction.** This ~~((section))~~ rule explains the carbonated beverage syrup tax (syrup tax) as imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the number of gallons of carbonated beverage syrup sold in this state ~~((for use in producing carbonated beverages that are sold))~~ at wholesale or retail ~~((in this state))~~. The syrup tax is in addition to all other taxes.

Except as otherwise provided in this rule, the provisions of chapters 82.04, 82.08, 82.12 and 82.32 RCW regarding definitions, due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all general administrative provisions apply to the syrup tax.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the syrup tax. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What is carbonated beverage syrup?** Carbonated beverage syrup (syrup) is a concentrated liquid that is added

to carbonated water to produce a carbonated beverage. ~~((“Syrup” includes concentrated liquid marketed by manufacturers to which purchasers add water, carbon dioxide, or carbonated water to produce a carbonated beverage.))~~ "Carbonated beverage" includes any nonalcoholic liquid intended for human consumption that contains any amount of carbon dioxide. Examples include soft drinks, mineral waters, seltzers, and fruit juices, if carbonated, and frozen carbonated beverages known as FCBs. "Carbonated beverage" does not include products such as bromides or carbonated liquids commonly sold as pharmaceuticals.

(3) **When is syrup tax imposed and how is it determined?** Syrup tax is imposed on the wholesale or retail sales of syrup within this state. The syrup tax is determined by the number of gallons of syrup sold. Fractional amounts are taxed proportionally.

(a) **When should syrup tax be reported and paid?** The frequency of reporting and paying the syrup tax coincides with the reporting periods of taxpayers for their business and occupation (B&O) tax. For example, a wholesaler who reports B&O tax monthly would also report any syrup tax liability on the monthly excise tax return.

(b) **What if I sell both previously taxed and nontaxed syrups?** Persons selling syrups in this state, some of which have been previously taxed in this or other states and some of which have not, may contact the department of revenue (department) for authorization to use formulary tax reporting. Prior to reporting in this manner, the person must receive a special ruling from the department that allows formulary reporting. A ruling may be obtained by writing the department at ~~((:))~~ [dor.wa.gov/content/ContactUs/Default.aspx](http://dor.wa.gov/content/ContactUs/Default.aspx); or

Taxpayer Information and Education  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478

Persons selling previously taxed syrups should refer to subsections (5)(a) and (6) of this ~~((section))~~ rule for information about an exemption or credit that may be applicable to such sales.

(4) **Who is responsible for paying the syrup tax?** This subsection explains who is responsible for payment of the syrup tax for both wholesale and retail sales of syrup in this state.

(a) **Wholesale sales.** A wholesaler making a wholesale sale of syrup in this state must collect the tax from the buyer and report and pay the tax to the department. If, however, the wholesaler is prohibited from collecting the tax under the Constitution of this state or the Constitution or laws of the United States, the wholesaler is liable for the tax. A wholesaler who fails or refuses to collect the syrup tax with intent to violate the provisions of chapter 82.64 RCW, or to gain some advantage directly or indirectly is guilty of a misdemeanor. The buyer is responsible for paying the syrup tax to the wholesaler. The syrup tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler, until the tax is paid by the buyer to the wholesaler. Except as provided in subsection (5)(b)(ii) of this ~~((section))~~ rule, the buyer is not obligated to pay or report the syrup tax to the department.



(b) **Retail sales.** A retailer making a retail sale in this state of syrup purchased from a wholesaler who has not collected the tax must report and pay the tax to the department. Except as provided in subsection (5)(b)(ii) of this ~~((section))~~ rule, the buyer is not obligated to pay or report the syrup tax to the department.

(5) **Exemptions:** This subsection provides information on exemptions from the syrup tax.

(a) **Previously taxed syrup.** Any successive sale of previously taxed syrup is exempt. See RCW 82.64.030(1). "Previously taxed syrup" is syrup on which tax has been paid under chapter 82.64 RCW.

(i) All persons selling or otherwise transferring possession of taxed syrup, except retailers, must separately itemize the amount of the syrup tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling syrup on which the syrup tax has been paid and who are prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business may, instead of a separate itemization of the amount of the syrup tax, provide a statement on the instrument of sale that the syrup tax has been paid. For purposes of the payment and the itemization of the syrup tax, the tax computed on standard units of a product (e.g., cases, liters, gallons) may be stated in an amount rounded to the nearest cent. In competitive bid documents, unless the syrup tax is separately itemized in the bid documents, the syrup tax will not be considered as included in the bid price. In either case, the syrup tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.

(ii) Any person prohibited by federal or state law, ruling, or requirement from itemizing the syrup tax on an invoice, bill of lading, or other document of delivery must retain the documentation necessary for verification of the payment of the syrup tax.

(iii) A subsequent sale of syrup sold or delivered upon an invoice, bill of lading, or other document of sale that contains a separate itemization of the syrup tax is exempt from the tax. However, a subsequent sale of syrup sold or delivered to the subsequent seller upon an invoice, bill of lading, or other document of sale that does not contain a separate itemization of the syrup tax is conclusively presumed to be previously untaxed syrup, and the seller must report and pay the syrup tax unless the sale is otherwise exempt.

(iv) The exemption for syrup tax previously paid is available for any person selling previously taxed syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.

(v) Example. Company A sells to Company B a syrup on which Company A paid a similar syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid (see subsection (6) of this ~~((section))~~ rule). It provides Company B with an invoice containing a separate itemization of the syrup tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) **Syrup transferred out-of-state.** Any syrup that is transferred to a point outside the state for use outside the state is exempt. See RCW 82.64.030(2). The exemption for the

sale of exported syrup may be taken by any seller within the chain of distribution.

(i) **Required documentation.** The prior approval of the department is not required to claim an exemption from the syrup tax for exported syrup. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "Certificate of Tax Exempt Export Carbonated Beverage Syrup," or another certificate with substantially the same information. A blank exemption certificate can be obtained through the following means:

(A) From the department's internet web site at (~~(http://~~ http://dor.wa.gov); or

(B) (~~By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options); or~~

(~~C~~)) By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.

(ii) The exemption certificate may be used so long as some portion of the syrup is exported. Sellers are under no obligation to verify the amount of syrup to be exported by their buyers providing such certificates. (~~Buyers providing exemption certificates for exported syrup agree to become~~) The buyer is liable for tax (and any associated penalties and interest) on syrup that is not exported.

(iii) Example. Company A sells a previously untaxed syrup to Company C. Company C provides the seller with a completed exemption certificate as explained in (b)(i) of this subsection. Company C sells the syrup to Company D, who provides Company C with an exemption certificate. Company D decides to not export a portion of the purchased syrup. Companies A and C can both accept exemption certificates. Company D is responsible for paying syrup tax on the syrup not exported.

(iv) Persons who make sales of syrup to persons outside this state must keep the proofs required by WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) to substantiate the out-of-state sales.

(c) **Taxation prohibited under the United States Constitution.** Persons or activities that the state is prohibited from taxing under the United States Constitution are exempt. See RCW 82.64.050(1).

For instance, sales of syrup are not taxable when sold to Indian tribes if the syrup is delivered in Indian country.

(i) Example. Big Cola (an instate manufacturer) sells syrup wholesale to Little Cola Distribution (a nonbottler). Big Cola collects and pays the syrup tax and shows it on the invoice of Little Cola Distribution. Little Cola Distribution then sells the syrup to a tribal casino restaurant in Indian country. In this situation the tax is not preempted. This is because the legal incidence of the tax is on Little Cola Distribution, a non-Indian outside of Indian country, as the first purchaser in a wholesale sale. Thus, the syrup tax is not preempted by the second wholesale sale to Indians in Indian country of syrup, even if the transaction is sufficiently connected to Indian country. In this circumstance, the legal incidence of the tax is not on the sale to the tribal casino restaurant in Indian country. The syrup tax was previously owed and paid by Little Cola Distribution in its purchase from Big

Cola. This tax is only collected once, notwithstanding that Little Cola Distribution separately itemized its syrup tax obligation as provided for in subsection (5)(a)(i) of this rule.

(ii) Example. Big Cola sells syrup wholesale to Little Cola Bottling (a trademarked bottler). Big Cola does not collect or pay the syrup tax from the sale to Little Cola Bottling due to the trademarked bottler exemption under subsection (5)(d) of this rule. Little Cola bottling then sells the bottled syrup to a tribal casino restaurant in Indian country. The syrup tax is preempted, in this situation, because the legal incidence of the tax is on the tribal casino restaurant, an Indian inside of Indian country.

(iii) Example. Big Cola sells syrup directly to an Indian casino restaurant in Indian country. This sale is preempted as a sale to an Indian in Indian country. In this instance the tax does not shift from the tribal purchaser to the non-Indian seller.

(d) **Wholesale sales of trademarked syrup to bottlers.** Any wholesale sale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell the trademarked syrup within a specific geographic territory is exempt. See RCW 82.64.030(3).

(6) **Syrup tax credits.**

(a) **B&O tax credit for syrup tax paid.** (~~Chapter 245, Laws of 2006 (SSB 6533) provided~~) RCW 82.04.4486 provides a B&O tax credit that was effective July 1, 2006. The credit is available to any buyer of syrup using the syrup in making carbonated beverages that are then sold, provided that the syrup tax, imposed by RCW 82.64.020, has been paid. The tax credit is a percentage of the syrup tax paid.

(i) **How much is the credit?** For syrup purchased July 1, 2006, through June 30, 2007, the B&O tax credit for the buyer (~~is~~) was equivalent to twenty-five percent of the syrup tax paid. From July 1, 2007, through June 30, 2008, the allowable credit (~~is~~) was fifty percent. From July 1, 2008, through June 30, 2009, the credit (~~is~~) was seventy-five percent. As of July 1, 2009, the buyer is entitled to a B&O tax credit of one hundred percent of the syrup tax paid.

(ii) **When can the credit be taken?** The B&O tax credit can be claimed against taxes due for the tax reporting period in which the taxpayer purchased the syrup. The credit cannot exceed the amount of B&O tax due, nor can credit be refunded. Unused credit may be carried over and used for future reporting periods for a maximum of one year. The year starts at the end of the reporting period in which the syrup was purchased and credit was earned. See (b)(ii)(B)(iii) of this subsection for record documentation and retention.

(b) **Credit for syrup tax paid to another state.** Credit is allowed against the taxes imposed by chapter 82.64 RCW for any syrup tax paid to another state with respect to the same syrup. The amount of the credit cannot exceed the tax liability arising under chapter 82.64 RCW. The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same syrup in this state. In addition, the credit may not be applied against any tax paid or owed in this state other than the syrup tax imposed by chapter 82.64 RCW.

(i) **What is a state?** For purposes of the syrup tax credit, "state" is any state of the United States other than Washington, or any political subdivision of another state; the District

of Columbia; and any foreign country or political subdivision of a foreign country.

(ii) **What is a syrup tax?** For purposes of the syrup tax credit, "syrup tax" means a tax that is:

(A) Imposed on the sale at wholesale of syrup and is not generally imposed on other activities or privileges; and  
(B) Measured by the volume of the syrup.

(iii) **How and when to claim the credit.** Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The excise tax return provides a line for reporting syrup tax, and the credit must be taken in the credit section under the credit classification "other credits." A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidence of entitlement to credits be submitted with the return. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

**WSR 14-01-088**

**PROPOSED RULES**

**DEPARTMENT OF**

**LABOR AND INDUSTRIES**

[Filed December 17, 2013, 10:03 a.m.]

Original Notice.

Expedited Rule Making-Proposed notice was filed as WSR 13-13-064.

Title of Rule and Other Identifying Information: eRules, chapter 296-829 WAC, Helicopters used as lifting machines; chapter 296-832 WAC, Late night retail worker crime prevention; chapter 296-876 WAC, Ladders, portable and fixed; and chapter 296-878 WAC, Window cleaning, SSB 5679.

**NEW SECTIONS:**

**WAC 296-829-099 Definitions, 296-876-099 Definitions, and 296-878-099 Definitions,** move the definitions section to the front of the rule and consolidated all definitions in one place.

**AMENDED SECTIONS:**

**WAC 296-829-100 Scope.**

Make word "Exemption" all caps. Number items in the exemption.

**WAC 296-829-200 Design and installation requirements for helicopters.**

Create summary table with links to subsections.

**WAC 296-829-20005 Follow Federal Aviation Administration (FAA) requirements.**

Consolidate requirement into a single sentence.

**WAC 296-829-20010 Install and test hooks on helicopters correctly.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-829-300 Maintenance.**

Create summary table with links to subsections.

**WAC 296-829-30005 Keep landing and deposit areas safe.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-829-30010 Follow safe refueling procedures.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-829-400 Operating the helicopter.**

Create summary table with links to subsections.

**WAC 296-829-40005 Hold daily briefings.**

Consolidate requirement into a single sentence.

**WAC 296-829-40010 Make sure employees are dressed correctly.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-829-40015 Make sure loads are attached correctly.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-829-40020 Make sure the load is handled correctly.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-832-200 Training.**

Create summary table with links to subsections.

**WAC 296-832-20005 Provide crime prevention training to your employees.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-832-20010 Provide crime prevention retraining to your employees annually.**

Consolidate requirement into a single sentence.

**WAC 296-832-300 Store safety.**

Create summary table with links to subsections.

**WAC 296-832-30005 Have a safe in your store.**

Consolidate requirement into a single sentence.

**WAC 296-832-30010 Post a notice about your store's safe and cash register.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Number Notes items.

**WAC 296-832-30015 Provide outside lighting.**

Consolidate requirement into a single sentence. Number Notes items.

**WAC 296-876-100 Scope.**

Make word "Exemption" all caps. Number items in the exemption.

**WAC 296-876-150 Training**

Create summary table with link to subsection.

**WAC 296-876-15005 Training.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-200 Design and construction.**

Create summary table with link to subsection.

**WAC 296-876-20005 Design and construction.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Move "Special purpose ladder" definition to WAC 296-876-099 Definitions.

**WAC 296-876-300 Ladder care.**

Create summary table with links to subsections.

**WAC 296-876-30005 Condition and inspection.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-30010 Repair.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-30015 Storage.**

Consolidate requirement into a single sentence. Remove bullet from Note text.

**WAC 296-876-30020 Transport.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-400 Portable ladder use.**

Create summary table with links to subsections.

**WAC 296-876-40005 Designed use.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Number Note items. Move "Maximum intended load" definition and "Ladder type" definition and table to WAC 296-876-099 Definitions.

**WAC 296-876-40010 Workplace activities or traffic.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-40015 Support.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-40020 Set-up.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Move "Working length" definition to WAC 296-876-099 Definitions. Remove redundant "Safe Ladder Angle" notation from above the graphic.

**WAC 296-876-40025 Climbing and descending.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Move "Single-rail ladder" definition to 296-876-099 Definitions.

**WAC 296-876-40030 Getting on and off ladders at upper levels.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Make the word "Exemption" all caps.

**WAC 296-876-40035 Exposed electrical hazards.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-40040 Persons on ladders.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-40045 Multisection ladders.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-40050 Self-supporting ladders.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Make the word "Exemption" all caps.

**WAC 296-876-500 Fixed ladder design and construction installed on or after December 1, 2006.**

Add "installed on or after December 1, 2006" to section name. Create summary table with link to subsection.

**WAC 296-876-50010 Design and construction—Fixed ladders installed on or after December 1, 2006.**

Consolidate requirement into a single sentence. Remove colon from Note to make text a continuous sentence.

**WAC 296-876-600 Fixed ladder design and construction installed before December 1, 2006.**

Add "installed before December 1, 2006" to section name. Create summary table with links to subsections.

**WAC 296-876-60005 Design and construction—Fixed ladders installed before December 1, 2006.**

Consolidate requirement into a single sentence. Remove colon from Note to make text a continuous sentence.

**WAC 296-876-60010 Design loads.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-60015 Pitch.**

Consolidate requirement into a single sentence. Number Notes items.

**WAC 296-876-60020 Welding.**

Consolidate requirement into a single sentence.

**WAC 296-876-60025 Ladder surfaces.**

Consolidate requirement into a single sentence.

**WAC 296-876-60030 Rungs, cleats and steps.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-60035 Side rails.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-60040 Clearances.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Make the word "Exemption" all caps.

**WAC 296-876-60045 Step-across distance.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-60050 Extensions and grab bars.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Number Note items. Make the word "Exemption" all caps.

**WAC 296-876-60055 Hatches.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-60060 Platforms.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Make the word "Exemption" all caps.

**WAC 296-876-60065 Protective structures and equipment.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Make the word "Exemption" all caps.

**WAC 296-876-60070 Cages.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. In subsection (4)(a), change "is" to "are."

**WAC 296-876-60075 Wells.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-60080 Ladder safety devices.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. In subsection (1)(a), hyphenate "five-hundred-pound weight."

**WAC 296-876-700 Fixed ladders inspection and maintenance.**

Delete "-- Section contents" from section title. Create summary table with links to subsections.

**WAC 296-876-70005 Protection against corrosion and deterioration.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-876-70010 Inspection and repair.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Number and lettered Note items and subitems.

**WAC 296-876-800 Fixed ladder use.**

Delete "-- Section contents" from section title. Create summary table with links to subsections.

**WAC 296-876-80005 Designed load.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Delete redundant "Maximum intended load" definition restatement already added to WAC 296-876-099 Definitions.

**WAC 296-876-80010 Climbing and descending.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-10005 Summary.**

Change "IMPORTANT" to upper and lowercase. Remove list of subsections, as each following three-digit WAC sec-

tion was changed to have its own summary table, with link(s) to any subsections within that three-digit WAC section.

**WAC 296-878-110 Training.**

Create summary table with links to subsections.

**WAC 296-878-11005 Train workers to use window-cleaning equipment.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Number Note items.

**WAC 296-878-120 Building surfaces and fixtures.**

Create summary table with link to subsection.

**WAC 296-878-12005 Make sure building surfaces and fixtures are safe to use.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-130 Inspection procedures.**

Create summary table with links to subsections.

**WAC 296-878-13005 Inspect the area to be cleaned.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-13010 Inspect window-cleaning equipment before use.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-140 Develop site-specific service and emergency plans.**

Create summary table with links to subsections.

**WAC 296-878-14005 Develop a site-specific service and emergency recovery plan for window-cleaning operations.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Number Note items.

**WAC 296-878-150 Equipment.**

Create summary table with links to subsections.

**WAC 296-878-15005 Select and use appropriate equipment.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-15015 Select appropriate rope for suspended equipment.**

Consolidate requirement into a single sentence.

**WAC 296-878-15020 Select appropriate carabiners.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-15025 Use fall protection equipment.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-160 Warning signs and barricades.**

Create summary table with link to subsection.

**WAC 296-878-16005 Provide warning signs and barricades when suspended equipment is used.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-170 Power line clearances.**

Create summary table with links to subsections.

**WAC 296-878-17005 Maintain clearance between window cleaners and power lines.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-180 Window-cleaners' belts and anchors.**

Create summary table with links to subsections.

**WAC 296-878-18005 Select appropriate window-cleaners' belts and anchors.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-18010 Inspect the anchors you plan to use for window cleaning.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-18015 Use window-cleaners' belts safely.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-18020 Move safely on the outside of buildings.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Number Note items.

**WAC 296-878-190 Boatswains' chairs.**

Create summary table with links to subsections.

**WAC 296-878-19005 Select appropriate boatswains' chairs.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-19010 Safely use boatswains' chairs rigged with a block and tackle.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Make "Exemption" all caps. Number exemption items.

**WAC 296-878-200 Rope descent systems.**

Create summary table with links to subsections.

**WAC 296-878-20005 Select appropriate rope descent systems.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-20010 Safely use rope descent systems.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed. Number Note items.

**WAC 296-878-20015 Safely use rope descent devices.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

**WAC 296-878-210 Equipment prohibited.**

Create summary table with links to subsections.

**WAC 296-878-21005 Prohibit equipment from use.**

Apply numbers (or numbers and letters) to content items, and repeated "You must" as needed.

December 17, 2013

Joel Sacks

Director

**REPEALED SECTIONS:**

**WAC 296-829-500 Definitions, 296-876-900 Definitions, and 296-878-220 Definitions**, are being proposed to be repealed.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Rooms S118 and S119, Tumwater, WA 98501, on January 23, 2014, at 1:00 p.m.

Date of Intended Adoption: April 22, 2014.

Submit Written Comments to: Catherine Julian, P.O. Box 44620, Olympia, WA 98504, e-mail [catherine.julian@lni.wa.gov](mailto:catherine.julian@lni.wa.gov), fax (360) 902-5619, by January 30, 2014.

Assistance for Persons with Disabilities: Contact Catherine Julian by January 9, 2014, (360) 902-5401 or [catherine.julian@lni.wa.gov](mailto:catherine.julian@lni.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- No requirements are changing because of this rule making.
- Consistent format for all DOSH safety and health rules.
- Easy to access rules for smart phone and tablet users.
- Bookmarks in the rules allow easy navigation in PDF files.
- Bullets and dashes are removed and replaced with numbers and letters for easier referencing.
- Enhances rule update efficiency for customers through electronic postings.

Reasons Supporting Proposal: Stakeholders have complained that our rules on the web are confusing and difficult to access in real time. When the agency updated its website, template DOSH rules in HTML were broken and DOSH began forwarding rule users to the office of the code reviser web site, which caused more confusion. This rule package will resolve stakeholder issues that have caused confusion for rule users by bringing one clear and consistent format to all of our rules.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Jeff Killip, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, (360) 902-5090.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No change in requirements, so no economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. No change in requirements, so no change in costs or benefits.

**NEW SECTION****WAC 296-829-099 Definitions.**

**Aviation gasoline.** Gasoline fuel for reciprocating piston engine helicopters, also known as avgas.

**Cargo hook.** A device attached to a helicopter that is used to hold suspended loads.

**Competent person.** One who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

**Deadman controls.** A control, switch or device that will automatically shut off whenever the operator releases it.

**Deposit area.** An area that is designated for dropping off and picking up suspended loads.

**Downwash.** The wind created by the rotating blades of a helicopter.

**Ground device.** A device used to dissipate the static electricity charge that has built up on a suspended load.

**Helicopter crane.** A helicopter that carries cargo or equipment suspended underneath it.

**Jet A type fuel.** A kerosene grade fuel suitable for helicopters with turbine engines.

**Jet B type fuel.** A blend of gasoline and kerosene fuel.

**Powered hoist.** A powered device designed to lift and lower equipment and cargo.

**Tag line.** A line or rope used to control suspended loads that can swing freely.

**AMENDATORY SECTION** (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-100 Scope.** Chapter 296-829 WAC applies to helicopters when used to carry loads, suspended with a cargo sling, powered hoist, or other attaching methods.

~~((Exemption))~~ This chapter does **not** apply to the use of helicopters:

**EXEMPTION:**

(\*) 1. In the logging industry.

(\*) 2. For rescue operations when a winch or hoist is used.

**AMENDATORY SECTION** (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-200 Design and installation requirements for helicopters.**

**Summary:**

**Your responsibility:** To make sure your helicopters meet design specifications and are equipped properly.

~~((You must~~

~~Follow Federal Aviation Administration (FAA) requirements~~

~~WAC 296-829-20005.~~

~~Install and test hooks on helicopters correctly~~

~~WAC 296-829-20010.))~~

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Follow Federal Aviation Administration (FAA) requirements</u>	<u>WAC 296-829-20005</u>
<u>Install and test hooks on helicopters correctly</u>	<u>WAC 296-829-20010</u>

AMENDATORY SECTION (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-20005 Follow Federal Aviation Administration (FAA) requirements.** You must((

•)) make sure helicopter cranes and their use meet the applicable requirements of the Federal Aviation Administration (FAA).

AMENDATORY SECTION (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-20010 Install and test hooks on helicopters correctly.** ((~~You must:~~

• Make sure electrically operated cargo hooks are:  
 — Designed and installed to prevent accidental operation.  
 — Equipped with an emergency mechanical control to release the load.

• Make sure a competent person tests all hooks before each day's operation to make sure both the electrical and mechanical releases work properly.)) (1) You must make sure electrically operated cargo hooks are:

(a) Designed and installed to prevent accidental operation.

(b) Equipped with an emergency mechanical control to release the load.

(2) You must make sure a competent person tests all hooks before each day's operation to make sure both the electrical and mechanical releases work properly.

AMENDATORY SECTION (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-300 Maintenance.**

**Summary:**

**Your responsibility:** To keep helicopters in safe operating condition.

((~~You must:~~

Keep landing and deposit areas safe

WAC 296-829-30005.

Follow safe refueling procedures

WAC 296-829-30010.))

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Keep landing and deposit areas safe</u>	<u>WAC 296-829-30005</u>
<u>Follow safe refueling procedures</u>	<u>WAC 296-829-30010</u>

AMENDATORY SECTION (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-30005 Keep landing and deposit areas safe.** ((~~You must:~~

(1) Make sure precautions are taken to prevent loose objects from being caught in the downwash and flying around.

• Secure or remove all loose gear:

— Within one hundred feet of lift and deposit areas.

— In all other areas affected by rotor downwash.

(2) Make sure employees do not work under hovering craft, except where necessary to hook or unhook loads.

(3) Make sure safe access and exit, including an emergency escape route, is provided for employees who hook or unhook loads.

(4) Prohibit open fires in any area that could be affected by the rotor downwash.

(5) Make sure unauthorized people do not go within fifty feet of the helicopter when the rotor blades are turning.

(6) Make sure all employees:

• Stay in full view of the pilot, in a crouched position, when approaching or leaving a helicopter with rotating blades.

• Stay away from the area behind the cockpit or cabin unless the operator authorizes them to work there.

(7) Take precautions to eliminate reduced visibility.

(8) Make sure ground personnel take special care to stay clear of rotors when visibility is reduced by dust or other conditions.)) (1) You must make sure precautions are taken to prevent loose objects from being caught in the downwash and flying around. Secure or remove all loose gear:

(a) Within one hundred feet of lift and deposit areas.

(b) In all other areas affected by rotor downwash.

(2) You must make sure employees do not work under hovering craft, except where necessary to hook or unhook loads.

(3) You must make sure safe access and exit, including an emergency escape route, is provided for employees who hook or unhook loads.

(4) You must prohibit open fires in any area that could be affected by the rotor downwash.

(5) You must make sure unauthorized people do not go within fifty feet of the helicopter when the rotor blades are turning.

(6) You must make sure all employees:

(a) Stay in full view of the pilot, in a crouched position, when approaching or leaving a helicopter with rotating blades.

(b) Stay away from the area behind the cockpit or cabin unless the operator authorizes them to work there.

(7) You must take precautions to eliminate reduced visibility.

(8) You must make sure ground personnel take special care to stay clear of rotors when visibility is reduced by dust or other conditions.

AMENDATORY SECTION (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-30010 Follow safe refueling procedures. (~~You must:~~**

- ~~Make sure refueling areas are safe.~~
- ~~Post "NO SMOKING" signs at all entrances to the refueling area.~~
- ~~Provide at least one thirty-pound fire extinguisher, or a combination totaling thirty pounds, good for class A, B, and C fires, within one hundred feet on the upwind side of the refueling operation.~~

**Reference:** For additional requirements relating to portable fire extinguishers, see WAC 296-800-300 in the safety and health core rules.

**~~You must:~~**

- ~~Make sure workers involved in refueling are trained in both:~~
- ~~The refueling operation;~~

**~~AND~~**

- ~~The use of fire extinguishing equipment they may need.~~

- ~~Make sure the following precautions are taken before and during refueling:~~

- ~~Keep unauthorized people at least fifty feet away from the refueling operation or equipment.~~
- ~~Prohibit smoking and open flames within fifty feet of the refueling area or fueling equipment.~~
- ~~Make sure helicopter engines are shut down before refueling, if using aviation gasoline or jet B type fuel.~~
- ~~Pump fuel, either by hand or power.~~
- ~~Use self-closing nozzles or deadman controls:~~
- ~~Do not allow these to be blocked open.~~
- ~~Make sure nozzles are not dragged along the ground.~~
- ~~Make sure the helicopter and the fueling equipment are grounded.~~

- ~~Electrically bond the fueling nozzle to the helicopter:~~
- ~~Do not use conductive hose for this bonding.~~
- ~~Make sure all grounding and bonding connections are:~~
- ~~Electrically and mechanically firm.~~
- ~~On clean unpainted metal parts.~~
- ~~Stop fueling **immediately** if there is a spill:~~
- ~~Do not continue operation until the person in charge has determined it is safe.))~~

(1) You must make sure refueling areas are safe.

(a) Post "NO SMOKING" signs at all entrances to the refueling area.

(b) Provide at least one thirty-pound fire extinguisher, or a combination totaling thirty pounds, good for class A, B, and C fires, within one hundred feet on the upwind side of the refueling operation.

**Reference:** For additional requirements relating to portable fire extinguishers, see WAC 296-800-300 in the safety and health core rules.

(2) You must make sure workers involved in refueling are trained in both:

- (a) The refueling operation; and
- (b) The use of fire extinguishing equipment they may need.

(3) You must make sure the following precautions are taken before and during refueling:

(a) Keep unauthorized people at least fifty feet away from the refueling operation or equipment.

(b) Prohibit smoking and open flames within fifty feet of the refueling area or fueling equipment.

(c) Make sure helicopter engines are shut down before refueling, if using aviation gasoline or jet B type fuel.

(d) Pump fuel, either by hand or power.

(e) Use self-closing nozzles or deadman controls:

(i) Do not allow these to be blocked open.

(ii) Make sure nozzles are not dragged along the ground.

(iii) Make sure the helicopter and the fueling equipment are grounded.

(iv) Electrically bond the fueling nozzle to the helicopter.

(v) Do not use conductive hose for this bonding.

(f) Make sure all grounding and bonding connections are:

(i) Electrically and mechanically firm.

(ii) On clean unpainted metal parts.

(4) Stop fueling **immediately** if there is a spill. Do not continue operation until the person in charge has determined it is safe.

AMENDATORY SECTION (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-400 Operating the helicopter.**

**Summary:**

**Your responsibility:** To make sure helicopters are operated safely.

**(~~You must:~~**

~~Hold daily briefings~~

~~WAC 296-829-40005.~~

~~Make sure employees are dressed correctly~~

~~WAC 296-829-40010.~~

~~Make sure loads are attached correctly~~

~~WAC 296-829-40015.~~

~~Make sure the load is handled correctly~~

~~WAC 296-829-40020.))~~

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Hold daily briefings</u>	<u>WAC 296-829-40005</u>
<u>Make sure employees are dressed correctly</u>	<u>WAC 296-829-40010</u>
<u>Make sure loads are attached correctly</u>	<u>WAC 296-829-40015</u>
<u>Make sure the load is handled correctly</u>	<u>WAC 296-829-40020</u>

AMENDATORY SECTION (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-40005 Hold daily briefings.** You must((:



•) make sure the helicopter pilot and ground personnel hold a briefing before each day's operation to discuss cargo-handling plans.

AMENDATORY SECTION (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-40010 Make sure employees are dressed correctly. (~~You must:~~**

- ~~Make sure employees receiving the load:~~
  - ~~Do NOT wear loose-fitting clothes that could snag on the hoist line.~~
  - ~~Wear personal protective equipment (PPE), including complete eye protection and hard hats that are secured by chin straps-))~~ You must make sure employees receiving the load:

(1) Do not wear loose-fitting clothes that could snag on the hoist line.

(2) Wear personal protective equipment (PPE), including complete eye protection and hard hats that are secured by chin straps.

**Reference:** For other requirements relating to PPE, see WAC 296-800-160 in the safety and health core rules.

AMENDATORY SECTION (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-40015 Make sure loads are attached correctly. (~~You must:~~**

- ~~Make sure loads are properly slung so tag lines cannot be drawn up into rotors.~~
- ~~Make sure precautions are taken on all freely suspended loads to keep hand splices from spinning open or cable clamps from loosening, such as using pressed sleeves or swedged eyes.~~
- ~~Make sure the weight of the load does not exceed the manufacturer's load ratings.~~
- ~~Make sure hoist wires and other gear are not attached to or allowed to catch on any fixed structure.))~~ (1) You must make sure loads are properly slung so tag lines cannot be drawn up into rotors.
- (2) You must make sure precautions are taken on all freely suspended loads to keep hand splices from spinning

open or cable clamps from loosening, such as using pressed sleeves or swedged eyes.

(3) You must make sure the weight of the load does not exceed the manufacturer's load ratings.

(4) You must make sure hoist wires and other gear are not attached to or allowed to catch on any fixed structure.

~~((Exemption))~~ This requirement does not apply to pulling lines or conductors that "pay out" from a container or reel.  
**EXEMPTION:**

AMENDATORY SECTION (Amending WSR 04-09-099, filed 4/20/04, effective 9/1/04)

**WAC 296-829-40020 Make sure the load is handled correctly. (~~You must:~~**

- ~~Make sure signal systems, whether radio or hand signals, are checked before hoisting the load:~~
  - ~~When using hand signals, use those shown in Figure 1.~~
  - ~~Make sure workers on the ground do either of the following before touching the suspended load:~~
    - ~~Use a ground device to safely discharge any static charge;~~

**OR**

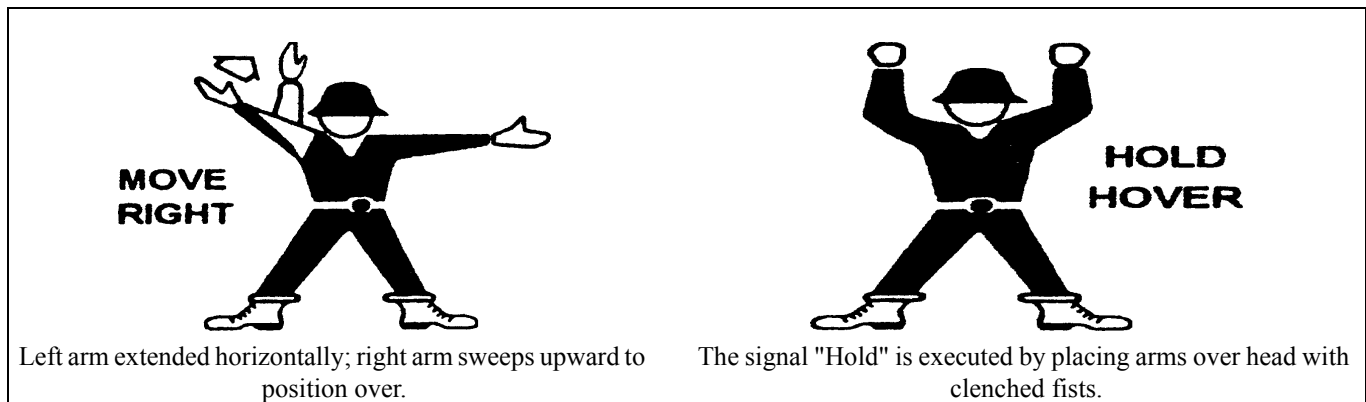
- ~~Put on and wear rubber gloves.~~
- ~~Make sure there are enough employees for safe loading and unloading operations.~~
- ~~Make sure constant communications are maintained between the pilot and signal person:~~

~~The signal person must be distinctly recognizable from other ground personnel.))~~ (1) You must make sure signal systems, whether radio or hand signals, are checked before hoisting the load. When using hand signals, use those shown in Figure 1.

(2) You must make sure workers on the ground do either of the following before touching the suspended load:

- (a) Use a ground device to safely discharge any static charge; or
- (b) Put on and wear rubber gloves.
- (3) You must make sure there are enough employees for safe loading and unloading operations.
- (4) You must make sure constant communications are maintained between the pilot and signal person.
- (5) You must make sure the signal person is distinctly recognizable from other ground personnel.

HELICOPTER HAND SIGNALS



**MOVE  
LEFT**



Right arm extended horizontally; left sweeps upward to position over head.

**TAKEOFF**



Right hand behind back; left hand pointing up.

**MOVE  
FORWARD**



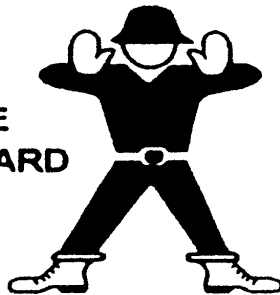
Combination of arm and hand movement in a collecting motion pulling toward head.

**LAND**



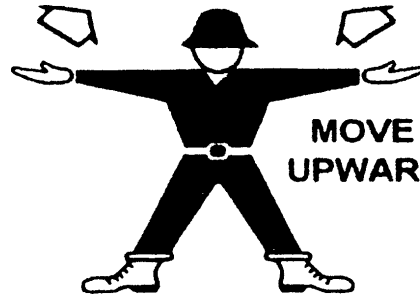
Arms crossed in front of body and pointing downward.

**MOVE  
REARWARD**



Hands above arm, palms out using a noticeable showing motion.

**MOVE  
UPWARD**



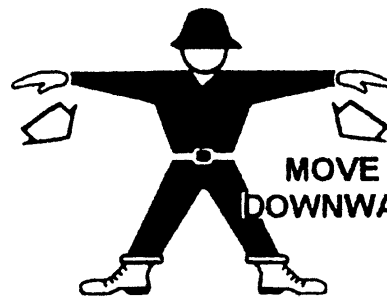
Arms extended, palms up; arms sweeping up.

**RELEASE  
SLING  
LOAD**



Left arm held down away from body. Right arm cuts across left arm in a slashing movement from above.

**MOVE  
DOWNWARD**



Arms extended, palms down; arms sweeping down.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 296-829-500 Definitions.

**AMENDATORY SECTION** (Amending WSR 02-16-087, filed 8/7/02, effective 10/1/02)

**WAC 296-832-200 Training.**

**SUMMARY**

**Your responsibility:** To make sure all employees receive crime prevention training as part of your accident prevention program.

~~((You must:~~

~~Provide crime prevention training to your employees~~

~~WAC 296-832-20005~~

~~Provide crime prevention retraining to your employees annually~~

~~WAC 296-832-20010.))~~

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Provide crime prevention training to your employees</u>	<u>WAC 296-832-20005</u>
<u>Provide crime prevention retraining to your employees annually</u>	<u>WAC 296-832-20010</u>

**AMENDATORY SECTION** (Amending WSR 02-16-087, filed 8/7/02, effective 10/1/02)

**WAC 296-832-20005 Provide crime prevention training to your employees.**

**Note:** These training requirements apply only to employees working any time during the hours of 11:00 p.m. to 6:00 a.m. This training must be conducted prior to the employee working this time period.

~~((You must:~~

~~• Provide crime prevention training as part of your accident prevention program.~~

~~— Make sure you have instructed your employees on the purpose and function of robbery and violence prevention to provide them with the knowledge and skills required to maintain their personal safety.~~

~~• Provide training and training materials that outline your company's:~~

~~— Security policies~~

~~— Safety and security procedures~~

~~— Personal safety and crime prevention techniques.~~

~~• Provide formal instruction about crime prevention through a training seminar or training video presentation that includes these topics:~~

~~— How keeping the store clean, neat and uncluttered discourages potential robbers~~

~~— Why the cash register should be kept in plain view from outside the store, if your store layout allows~~

~~— Reasons for operating your business with only a minimum number of cash registers at night~~

~~— Reasons for keeping cash register funds to a minimum~~

~~— How to take extra precautions after dark such as ways to keep alert, making sure appropriate lights are on, inspecting dark corners, and identifying possible hiding places for robbers~~

~~— Violence prevention procedures in case of a robbery.~~

~~• Have employees sign a statement indicating the date, time, and place they received their crime prevention training.~~

~~• Keep a record of this information readily available for review when requested by the department of labor and industries.)~~

(1) You must provide crime prevention training as part of your accident prevention program. Make sure you have instructed your employees on the purpose and function of robbery and violence prevention to provide them with the knowledge and skills required to maintain their personal safety.

(2) You must provide training and training materials that outline your company's:

(a) Security policies;

(b) Safety and security procedures;

(c) Personal safety and crime prevention techniques.

(3) You must provide formal instruction about crime prevention through a training seminar or training video presentation that includes these topics:

(a) How keeping the store clean, neat, and uncluttered discourages potential robbers;

(b) Why the cash register should be kept in plain view from outside the store, if your store layout allows;

(c) Reasons for operating your business with only a minimum number of cash registers at night;

(d) Reasons for keeping cash register funds to a minimum;

(e) How to take extra precautions after dark such as ways to keep alert, making sure appropriate lights are on, inspecting dark corners, and identifying possible hiding places for robbers;

(f) Violence prevention procedures in case of a robbery.

(4) You must have employees sign a statement indicating the date, time, and place they received their crime prevention training.

(5) You must keep a record of this information readily available for review when requested by the department of labor and industries.

**Note:** Employers may keep electronic records of employee training and verification.

~~((Have a videotape or other materials about crime prevention available to all employees at their request.))~~

(6) You must have a videotape or other materials about crime prevention available to all employees at their request.

**AMENDATORY SECTION** (Amending WSR 02-16-087, filed 8/7/02, effective 10/1/02)

**WAC 296-832-20010 Provide crime prevention retraining to your employees annually.** You must((:

~~•) provide a refresher course in crime prevention training annually.~~

AMENDATORY SECTION (Amending WSR 02-16-087, filed 8/7/02, effective 10/1/02)

**WAC 296-832-300 Store safety.**

**SUMMARY**

**Your responsibility:** To take certain safety measures to discourage crime in your store.

~~((You must:~~

~~Have a safe in your store~~

~~WAC 296-832-30005~~

~~Post a notice about your store's safe and cash register~~

~~WAC 296-832-30010~~

~~Provide outside lighting~~

~~WAC 296-832-30015.))~~

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Have a safe in your store</u>	<u>WAC 296-832-30005</u>
<u>Post a notice about your store's safe and cash register</u>	<u>WAC 296-832-30010</u>
<u>Provide outside lighting</u>	<u>WAC 296-832-30015</u>

AMENDATORY SECTION (Amending WSR 02-16-087, filed 8/7/02, effective 10/1/02)

**WAC 296-832-30005 Have a safe in your store.** You must(~~=~~

~~•)) have a drop-safe, limited access safe, or comparable device in your store.~~

AMENDATORY SECTION (Amending WSR 02-16-087, filed 8/7/02, effective 10/1/02)

**WAC 296-832-30010 Post a notice about your store's safe and cash register.** (~~((You must:~~

~~• Post a notice in an obvious place on a window or door stating:~~

~~—There is a safe in the store~~

~~—Employees have no access to the safe~~

~~—The cash register contains only enough cash to do business.)) You must post a notice in an obvious place on a window or door stating:~~

(1) There is a safe in the store.

(2) Employees have no access to the safe.

(3) The cash register contains only enough cash to do business.

**Notes:** ((\*) 1. You will not be cited by ((WISHA)) DOSH for having money in the cash register over the minimal amount needed to do business.

((\*) 2. All displays and other materials posted in the window(s) or door(s) should be arranged to provide an unobstructed view of the cash register if it is visible from the street.

AMENDATORY SECTION (Amending WSR 02-16-087, filed 8/7/02, effective 10/1/02)

**WAC 296-832-30015 Provide outside lighting.** You must(~~=~~

~~•)) light the store's approach area and parking lot during all night hours your business is open.~~

**Note:** You can do this by:

((-) 1. Providing surveillance lighting to observe pedestrian and vehicle entrances.

((-) 2. Providing lighting of a minimum of one foot candle to comply with ANSI/IES RP7-1983. Lighting levels can be measured with a light meter; for comparison purposes 1 foot-candle = 1 lumen incident per square foot = 10.76 lux.

NEW SECTION

**WAC 296-876-099 Definitions.**

**Cage.** An enclosure that encircles the climbing space of a fixed ladder. It is fastened to the ladder side rails or to the structure and may also be called a cage or basket guard.

**Cleat.** A ladder crosspiece used in climbing or descending. Also called a step or rung.

**Equivalent.** Alternative design, material, or method to protect against a hazard. You have to demonstrate it provides an equal or greater degree of safety for employees than the method, material, or design specified in the rule.

**Extension ladder.** A nonself-supporting portable ladder consisting of two or more sections. The sections travel in guides or brackets that allow the length of the ladder to be changed. The size is designated by the sum of the lengths of each section, measured along the side rails.

**Failure.** The ladder or ladder component loses the ability to carry the load, breaks, or separates into component parts.

**Fastenings.** Devices to attach a ladder to a structure, building, or equipment.

**Fixed ladder.** A ladder permanently attached to a structure, building, or equipment.

**Grab bars.** Handholds placed adjacent to or as an extension above ladders for the purpose of providing access beyond the limits of the ladder.

**Job-made ladder.** A ladder that is made, not commercially manufactured, to fit a specific job situation. They are for temporary use until a particular phase of construction is completed or until permanent stairways or fixed ladders are ready to use.

**Individual-rung/step ladder.** A fixed ladder consisting of individual steps or rungs mounted directly to the side or wall of the structure, building, or equipment.

**Ladder.** A device having steps, rungs, or cleats that can be used to climb or descend.

**Ladder safety device.** Any device, other than a cage or well, designed to arrest the fall of a person using a fixed ladder.

**Ladder type.** The designation that identifies the maximum intended load (working load) of the ladder. Ladder types are as follows:

<b>Duty Rating</b>	<b>Ladder Type</b>	<b>Use</b>	<b>Maximum Intended Load (pounds)</b>
Extra Heavy-Duty	IA	Industry, utilities, contractors	300
Heavy-Duty	I	Industry, utilities, contractors	250

Duty Rating	Ladder Type	Use	Maximum Intended Load (pounds)
Medium-Duty	II	Painters, offices, light maintenance	225
Light-Duty	III	General household use	200

**Landing.** Any area such as the ground, roof, or platform that provides access or egress to a ladder.

**Maximum intended load.** The total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a ladder or ladder component at any one time. Sometimes referred to as working load.

**Pitch.** The included angle between the horizontal and the ladder, measured on the opposite side of the ladder from the climbing side.

**Portable ladder.** A ladder that can be readily moved or carried.

**Reinforced plastic.** A plastic that has high-strength fillers embedded in the base resin to increase strength.

**Reinforced plastic ladder.** A ladder whose side rails are reinforced plastic. The crosspieces, hardware, and fasteners may be made of metal or other suitable material.

**Rung.** A ladder crosspiece used in climbing or descending. Also called a cleat or step.

**Side-step ladder.** A fixed ladder that requires a person to step to the side of the ladder side rails to reach the landing.

**Single ladder.** A nonself-supporting portable ladder, nonadjustable in length, consisting of one section. The size is designated by the overall length of the side rail.

**Single-rail ladder.** A portable ladder with crosspieces mounted on a single rail. Single-rail ladders are prohibited from use.

**Special-purpose ladder.** A portable ladder that is made by modifying or combining design or construction features of the general-purpose types of ladders in order to adapt the ladder to special or specific uses.

**Step.** A ladder crosspiece used in climbing or descending. Also called a cleat or rung.

**Stepladder.** A self-supporting portable ladder, nonadjustable in length, with flat steps and hinged at the top. The size is designated by the overall length of the ladder measured along the front edge of the side rails.

**Through ladder.** A fixed ladder that requires a person to step between the side rails of the ladder to reach the landing.

**Trestle ladder.** A self-supporting portable ladder, nonadjustable in length, consisting of two sections hinged at the top to form equal angles with the base. The size is designated by the length of the side rails measured along the front edge.

**Well.** A walled enclosure around a fixed ladder that provides a person climbing the ladder with the same protection as a cage.

**Working length.** The length of a nonself-supporting ladder, measured along the rails, from the base support point of the ladder to the point of bearing at the top.

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-100 Scope.** This chapter applies to portable and fixed ladders, including job-made wooden ladders.

~~((Exemption))~~ This chapter does not apply to:  
**EXEMPTION:**

- ((\*) 1. Portable ladders used by the fire services for fire combat that are covered by safety standards for firefighters, chapter 296-305 WAC;
- ((\*) 2. Agriculture activities covered by safety standards for agriculture, chapter 296-307 WAC.

AMENDATORY SECTION (Amending WSR 06-22-024, filed 10/24/06, effective 12/1/06)

**WAC 296-876-150 Training**~~((—Section contents))~~.

**Your responsibility:** To train employees who use ladders.

~~((Training-  
WAC 296-876-15005.))~~

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Training</u>	<u>WAC 296-876-15005</u>

AMENDATORY SECTION (Amending WSR 06-22-024, filed 10/24/06, effective 12/1/06)

**WAC 296-876-15005 Training.** (1) You must

((= \*)) train employees to recognize ladder hazards and the procedures to minimize these hazards.

((\*) (2) You must have a competent person train employees that use ladders in at least the following topics:

((-) (a) The proper construction, use, placement, and care in handling ladders.

((-) (b) The maximum intended load capacities of ladders that are used.

((-) (c) The requirements of this chapter.

((\*) (3) You must retrain employees as necessary to make sure they know and understand the content of the original training.

AMENDATORY SECTION (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-200 Design and construction**~~((—Section contents))~~.

**Summary**

**Your responsibility:** To make sure portable ladders meet design and construction requirements.

~~((Design and construction  
WAC 296-876-20005.))~~

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Design and construction</u>	<u>WAC 296-876-20005</u>

AMENDATORY SECTION (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-20005 Design and construction.**

~~((IMPORTANT))~~ **Important:**

Design and construction requirements of this section do not apply to special purpose ladders.

~~((Definition:~~

~~A *special purpose ladder* is a portable ladder that is made by modifying or combining design or construction features of the general purpose types of ladders in order to adapt the ladder to special or specific uses.))~~

~~(1) You must(=~~

~~\*) make sure portable ladders and job-made wooden ladders manufactured **on or after January 1, 2006**, meet the design and construction requirements and specifications of the appropriate American National Standards Institute (ANSI) standard:~~

~~((-) (a) ANSI A14.1-2000, American National Standard for Ladders-Portable Wood-Safety Requirements.~~

~~((-) (b) ANSI A14.2-2000, American National Standard for Ladders-Portable Metal-Safety Requirements.~~

~~((-) (c) ANSI A14.5-2000, American National Standard for Ladders-Portable Reinforced Plastic-Safety Requirements.~~

~~((-) (d) ANSI A14.4-2002, American National Standard Safety Requirements for Job-Made Wooden Ladders.~~

~~((\*) (2) You must make sure portable ladders manufactured **before January 1, 2006**, meet the design and construction requirements and specifications of the appropriate ANSI standard in effect on the date of manufacture:~~

~~((-) (a) ANSI A14.1, American National Standard for Ladders-Portable Wood-Safety Requirements.~~

~~((-) (b) ANSI A14.2, American National Standard for Ladders-Portable Metal-Safety Requirements.~~

~~((-) (c) ANSI A14.5, American National Standard for Ladders-Portable Reinforced Plastic-Safety Requirements.~~

Note: A commercially manufactured portable ladder should have a label indicating it meets the requirements of the ANSI standard. If in doubt, check with the manufacturer.

AMENDATORY SECTION (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-300 Ladder care(~~Section contents~~)).**

**Summary**

**Your responsibility:** To make sure portable ladders are inspected, maintained, stored, and transported properly.

~~((Condition and inspection~~

~~WAC 296-876-30005.~~

~~Repair~~

~~WAC 296-876-30010.~~

~~Storage~~

~~WAC 296-876-30015.~~

~~Transport~~

~~WAC 296-876-30020.))~~

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Condition and inspection</u>	<u>WAC 296-876-30005</u>
<u>Repair</u>	<u>WAC 296-876-30010</u>
<u>Storage</u>	<u>WAC 296-876-30015</u>
<u>Transport</u>	<u>WAC 296-876-30020</u>

AMENDATORY SECTION (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-30005 Condition and inspection. (1)**

You must(=

\*) keep portable ladders in good, usable condition. Good, usable condition includes, but is not limited to:

((-) (a) Joints between the steps or rungs and the side rails are tight.

((-) (b) Rungs, cleats, or steps are not bent, broken, or missing.

((-) (c) Side rails are not bent, broken, or split.

((-) (d) All bolts and rivets are in place and secure.

((-) (e) Hardware, fittings, and accessories are securely attached and working properly.

((-) (f) Ropes are not frayed or badly worn.

((-) (g) Moveable parts operate freely without binding or excessive play.

((-) (h) Safety feet and other auxiliary equipment are not excessively worn.

((-) (i) Metal components are not corroded.

((-) (j) There are no other faulty or defective components.

((\*) (2) You must make sure wood ladders are not coated with an opaque covering except for the minimum amount necessary for identification and warning information which may be placed on one face only of a side rail.

((\*) (3) You must have a competent person inspect a ladder:

((-) (a) When required by Table 1, Ladder Inspection Criteria; ~~((AND))~~ and

((-) (b) After any other occurrence that could affect safe use.

((\*) (4) You must make sure any ladder with structural damage or other hazardous defect is:

((-) (a) Marked to identify it as defective or tagged with "do not use" or similar language; ~~((AND))~~ and

((-) (b) Removed from service.

Note: Ladders subjected to certain acids or alkali materials may experience chemical corrosion and a reduction in strength. Consult the manufacturer or a qualified person prior to use.

**Table 1  
Ladder Inspection Criteria**

When the ladder is:	Do the following:
First placed into service and periodically while in service	<p>((*) 1. Inspect the ladder for visible defects, including, but not limited to:</p> <p>((-) 1. Working parts; <del>((AND))</del> and</p> <p>((-) 2. Rung or step connections to the side rails.</p>
Damaged by impact or tips over	<p>((*) 1. Visually inspect the ladder for( -) dents, bends, cracks or splits</p> <p>((*) 2. Check:</p> <p>((-) a. Rung or step connections to the side rails.</p> <p>((-) b. Hardware connections.</p> <p>((-) c. Rivets for shear damage.</p> <p>((-) d. All other components.</p>
Exposed to excessive heat such as a fire	<p>((*) 1. Visually inspect the ladder for damage.</p> <p>((*) 2. Test for deflection and strength characteristics using the "in-service use tests" contained in the appropriate ANSI.</p> <p><del>((Exemption))</del> <b>EXEMPTION:</b> Job-made wooden ladders are not to be subjected to load or impact tests. Those tests may weaken lumber components or fasteners, causing hidden damage that could result in sudden failure during use.</p>

AMENDATORY SECTION (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-30010 Repair.** (1) You must(  
(\*) make sure repairs restore the ladder to a condition meeting its original design criteria.

((\*) (2) You must prohibit repairs to a defective side rail.

Note: A commercially manufactured ladder with a defective side rail cannot be repaired by the user. Side rail repair can only be done by the manufacturer.

AMENDATORY SECTION (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-30015 Storage.** You must(  
(\*) make sure material is not put on ladders in storage.

Note: ((\*) Store portable ladders on racks designed to protect them when not in use. The racks should have enough supporting points to prevent the ladder from sagging. ((\*) Do not store wood ladders near sources of heat, moisture, or dampness.

AMENDATORY SECTION (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-30020 Transport.** (1) You must(  
(\*) properly support ladders while transporting them on vehicles.

((\*) (2) You must make sure ladders transported in a truck rack are positively secured in a fixed position that prevents chafing or abrasion.

Note: Securing the ladder to each support point will greatly reduce damage due to road shock.

AMENDATORY SECTION (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-400 ((Use—Section contents)) Portable ladder use.**

**Summary**

**Your responsibility:** To use portable ladders safely.

~~((Designed use~~

~~WAC 296-876-40005.~~

~~Workplace activities or traffic~~

~~WAC 296-876-40010.~~

~~Support~~

~~WAC 296-876-40015.~~

~~Set-up~~

~~WAC 296-876-40020.~~

~~Climbing and descending~~

~~WAC 296-876-40025.~~

~~Getting on and off ladders at upper levels~~

~~WAC 296-876-40030.~~

~~Exposed electrical hazards~~

~~WAC 296-876-40035.~~

~~Persons on ladders~~

~~WAC 296-876-40040.~~

~~Multisection ladders~~

~~WAC 296-876-40045.~~

~~Self-supporting ladders~~

~~WAC 296-876-40050.))~~

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Designed use</u>	<u>WAC 296-876-40005</u>
<u>Workplace activities or traffic</u>	<u>WAC 296-876-40010</u>
<u>Support</u>	<u>WAC 296-876-40015</u>
<u>Set-up</u>	<u>WAC 296-876-40020</u>
<u>Climbing and descending</u>	<u>WAC 296-876-40025</u>
<u>Getting on and off ladders at upper levels</u>	<u>WAC 296-876-40030</u>
<u>Exposed electrical hazards</u>	<u>WAC 296-876-40035</u>
<u>Persons on ladders</u>	<u>WAC 296-876-40040</u>
<u>Multisection ladders</u>	<u>WAC 296-876-40045</u>
<u>Self-supporting ladders</u>	<u>WAC 296-876-40050</u>

AMENDATORY SECTION (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-40005 Designed use.** (1) You must(  
(\*) use ladders only for their intended purpose.

Note: Unless specifically recommended by the manufacturer, do not use a ladder as a:

- ((\*) 1. Brace.
- ((\*) 2. Skid.
- ((\*) 3. Lever.
- ((\*) 4. Guy or gin pole.
- ((\*) 5. Gangway.
- ((\*) 6. Platform.
- ((\*) 7. Scaffold plank.
- ((\*) 8. Material hoist.

(2) You must(=
   
\*) make sure not to overload ladders. Do not exceed either the:

- ((-) (a) Maximum intended load; ((OR)) or
- ((-) (b) Manufacturer's rated capacity.

**Definitions:**

~~The **maximum intended load** is the total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a ladder or ladder component at any one time.~~

~~**Ladder type.** The designation that identifies the maximum intended load (working load) of the ladder. Ladder types are as follows:~~

<b>Duty Rating</b>	<b>Ladder Type</b>	<b>Use</b>	<b>Maximum Intended Load (Pounds)</b>
Extra-Heavy-Duty	IA	Industry, utilities, contractors	300
Heavy-Duty	I	Industry, utilities, contractors	250
Medium-Duty	II	Painters, offices, light maintenance	225
Light Duty	III	General household use	200))

**AMENDATORY SECTION** (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-40010 Workplace activities or traffic.**

(1) You must(=
   
\*) protect ladders that are ((set-up)) set up in a location where they could be displaced by workplace activities or traffic by either:

- ((-) (a) Securing the ladder to prevent accidental displacement; ((OR)) or
- ((-) (b) Using a barricade to keep the activities or traffic away from the ladder.

((\*) (2) You must protect ladders that are set-up in front of doors that open towards the ladder by doing at least one of the following:

- ((-) (a) Block the door open.
- ((-) (b) Lock the door.
- ((-) (c) Guard the door to keep it from opening into the ladder.

**AMENDATORY SECTION** (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-40015 Support.** (1) You must(=
   
\*) place the ladder either:

- ((-) (a) With a secure footing on a firm, level support surface; ((OR)) or
- ((-) (b) Secure the ladder to prevent accidental displacement.

((\*) (2) You must make sure a ladder is not placed on ice, snow, or other slippery surface unless the ladder is prevented from accidental displacement by either:

- ((-) (a) Securing it; ((OR)) or
- ((-) (b) Providing the ladder with slip-resistant feet.

Note: Slip-resistant feet are not a substitute for care in placing, lashing, or holding a ladder that is used on a slippery surface.

(3) You must(=
   
\*) make sure ladders are not placed on boxes, barrels, or other unstable bases to obtain additional height.

((\*) (4) You must place a straight ladder so the side rails are equally supported by the top support, unless the ladder is equipped with a single support attachment.

((\*) (5) You must make sure the top support of the ladder is reasonably rigid and able to support the load.

**AMENDATORY SECTION** (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-40020 Set-up.** (1) You must(=

\*) set up nonself-supporting ladders at a safe angle. The ladder is set at the proper angle when the horizontal distance from the top support to the foot of the ladder is approximately one-quarter the working length of the ladder.

((\*) (2) You must set up job-made ladders with spliced side rails so that the horizontal distance from the top support to the foot of the ladder is not greater than one-eighth the working length of the ladder.

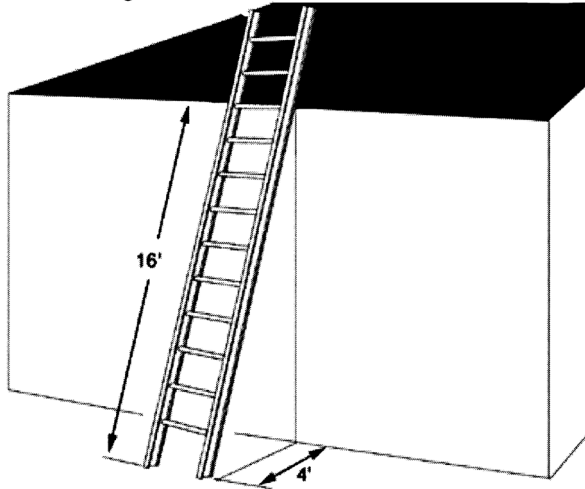
**Definition:**

~~The **working length** of a nonself-supporting ladder is the length, measured along the rails, from the base support point of the ladder to the point of bearing at the top.~~



**Safe Ladder Angle))**

**Note:**  
Safe ladder angle.



**AMENDATORY SECTION** (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-40025 Climbing and descending. (1)**

You must((=

•)) have both hands free to hold on to the ladder.

((•)) (2) You must face the ladder when climbing or descending.

((•)) (3) You must keep ladders free of oil, grease, or other slippery materials.

((•)) (4) You must keep the area around the top and bottom of ladders clear.

((•)) (5) You must make sure single-rail ladders are not used.

**((Definition:**

**A single-rail ladder** is a portable ladder with crosspieces mounted on a single rail.))

**AMENDATORY SECTION** (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-40030 Getting on and off ladders at upper levels. (1)**

You must((=

•)) make sure a ladder used to access an upper level has the side rails extended at least three feet ((=9)) 0.9 m) above the landing surface if the ladder length permits.

((•)) (2) You must do the following if a ladder used to access an upper level is not long enough to obtain a three-foot side rail extension above the landing surface:

((=)) (a) Secure the ladder at the top to a rigid support that will not deflect.

((=)) (b) Provide a grasping device, such as a grabrail, to assist in mounting and dismounting the ladder.

((=)) (c) Make sure the ladder deflection under a load would not, by itself, cause it to slip off its support.

((•)) (3) You must make sure, if two or more separate ladders are used to reach an elevated work area, that the ladders are offset with a platform or landing between them.

**EXEMPTION:** A platform or landing is not required when a portable ladder is used to reach a fixed ladder on structures such as utility towers and billboards where the bottom of the fixed ladder is elevated to limit access.

**AMENDATORY SECTION** (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-40035 Exposed electrical hazards.**

You must((=

•)) use ladders with nonconductive side rails where the ladder could contact uninsulated, energized electric lines or equipment. ((=)) Metal ladders or other ladders specifically designed to permit grounding or dissipation of static electricity may be used around high-static electrical fields if all of the following are met:

((•)) (1) Using nonconductive ladders would present a greater hazard than using conductive ladders.

((•)) (2) Ladders are prominently marked and identified as being conductive.

((•)) (3) Ladders are grounded when used near energized lines or equipment.

**Note:** Examples of ladders with conductive side rails are metal ladders, and wood or reinforced plastic ladders with metal side rail reinforcement.

**AMENDATORY SECTION** (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-40040 Persons on ladders. (1)**

You must((=

•)) make sure a ladder is not moved, shifted, or adjusted while anyone is on it.

((•)) (2) You must secure the ladder at the top and bottom when working from it.

((•)) (3) You must use a safety belt with a lanyard that is secured to the ladder when doing any work that:

((=)) (a) Requires the use of both hands; ((AND)) and

((=)) (b) Is done from a ladder more than twenty-five feet above the ground or floor.

((•)) (4) You must prohibit work being done from a ladder more than twenty-five feet above the ground or floor if the work requires wearing eye protection or a respirator.

**AMENDATORY SECTION** (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-40045 Multisection ladders. (1)**

You must((=

•)) make sure not to tie or fasten ladder sections together to make longer ladders unless:

((=)) (a) The ladder manufacturer endorses this type of use; ((AND)) and

((=)) (b) You have hardware fittings specifically designed for this purpose.

((•)) (2) You must make sure each section of a multisection ladder, when fully extended and locked in position to be used, overlaps the adjacent section as indicated in Table 2, Minimum Required Overlap for Extension Ladders.

**Table 2**  
**Minimum Required Overlap for Extension Ladders**

<b>If the ladder size (feet) is:</b>	<b>Minimum required overlap (feet) for a two-section ladder is ((feet)):</b>
Up to and including 36	3
Over 36 up to and including 48	4
Over 48 up to and including 60	5

AMENDATORY SECTION (Amending WSR 05-20-068, filed 10/4/05, effective 1/1/06)

**WAC 296-876-40050 Self-supporting ladders. (1)** You must(=

•) make sure self-supporting ladders are not used as single ladders or in the partially closed position.

((•) (2) You must make sure stepladders are fully opened with the spreaders locked.

((•) (3) You must make sure not to climb on the rear braces of a self-supporting ladder unless they are designed and recommended for that purpose by the manufacturer.

((•) (4) You must prohibit standing or stepping on the:

((-) (a) Top cap and top step of a step or trestle ladder.

((-) (b) Bucket or pail shelf of a self-supporting ladder.

~~((Exemption))~~ The restriction against using the top step is not applicable if it is eighteen inches or more below the top cap.  
**EXEMPTION:**

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-500 Fixed ladder design and construction(~~Section contents~~) installed on or after December 1, 2006.**

**Summary**

**Your responsibility:** To make sure fixed ladders installed on or after December 1, 2006, meet design and construction requirements.

~~((Design and construction Fixed ladders installed on or after December 1, 2006:~~

~~WAC 296-876-50010))~~

<b><u>You must meet the requirements...</u></b>	<b><u>in this section:</u></b>
<u>Design and construction— Fixed ladders installed on or after December 1, 2006</u>	<u>WAC 296-876-50010</u>

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-50010 Design and construction— Fixed ladders installed on or after December 1, 2006.** You must(=

•) make sure fixed ladders installed on or after December 1, 2006, meet the design and construction requirements of ANSI A14.3-2002, American National Standard for Ladders-Fixed-Safety Requirements.

Note: Ladders will be considered to have met the requirements of this section if they meet the design and construction requirements of ANSI A14.3, American National Standard for Ladders-Fixed-Safety Requirements, in effect at the time they are installed.

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-600 Fixed ladder design and construction(~~Section contents~~) installed before December 1, 2006.**

**Summary**

**Your responsibility:** To make sure fixed ladders installed before December 1, 2006, meet design and construction requirements.

~~((Design and construction Fixed ladders installed before December 1, 2006:~~

~~WAC 296-876-60005~~

~~Design loads:~~

~~WAC 296-876-60010~~

~~Pitch:~~

~~WAC 296-876-60015~~

~~Welding:~~

~~WAC 296-876-60020~~

~~Ladder surfaces:~~

~~WAC 296-876-60025~~

~~Rungs, cleats and steps:~~

~~WAC 296-876-60030~~

~~Side rails:~~

~~WAC 296-876-60035~~

~~Clearances:~~

~~WAC 296-876-60040~~

~~Step-across distance:~~

~~WAC 296-876-60045~~

~~Extensions and grab bars:~~

~~WAC 296-876-60050~~

~~Hatches:~~

~~WAC 296-876-60055~~

~~Platforms:~~

~~WAC 296-876-60060~~

~~Protective structures and equipment:~~

~~WAC 296-876-60065~~

~~Cages:~~

~~WAC 296-876-60070~~

~~Wells:~~

~~WAC 296-876-60075~~

~~Ladder safety devices:~~

~~WAC 296-876-60080))~~

<b><u>You must meet the requirements...</u></b>	<b><u>in this section:</u></b>
<u>Design and construction— Fixed ladders installed before December 1, 2006.</u>	<u>WAC 296-876-60005</u>

<b><u>You must meet the requirements...</u></b>	<b><u>in this section:</u></b>
<u>Design loads</u>	<u>WAC 296-876-60010</u>
<u>Pitch</u>	<u>WAC 296-876-60015</u>
<u>Welding</u>	<u>WAC 296-876-60020</u>
<u>Ladder surfaces</u>	<u>WAC 296-876-60025</u>
<u>Rungs, cleats and steps</u>	<u>WAC 296-876-60030</u>
<u>Side rails</u>	<u>WAC 296-876-60035</u>
<u>Clearances</u>	<u>WAC 296-876-60040</u>
<u>Step-across distance</u>	<u>WAC 296-876-60045</u>
<u>Extensions and grab bars</u>	<u>WAC 296-876-60050</u>
<u>Hatches</u>	<u>WAC 296-876-60055</u>
<u>Platforms</u>	<u>WAC 296-876-60060</u>
<u>Protective structures and equipment</u>	<u>WAC 296-876-60065</u>
<u>Cages</u>	<u>WAC 296-876-60070</u>
<u>Wells</u>	<u>WAC 296-876-60075</u>
<u>Ladder safety devices</u>	<u>WAC 296-876-60080</u>

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60005 Design and construction—Fixed ladders installed before December 1, 2006.** You must(=

•) make sure fixed ladders installed before December 1, 2006, meet the requirements of WAC 296-876-60010 through 296-876-60080.

Note: Ladders will be considered to have met the requirements of this section if they meet the design and construction requirements of ANSI A14.3, American National Standard for Ladders-Fixed-Safety Requirements, in effect at the time they are installed.

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60010 Design loads. (1)** You must(=

•) make sure each ladder is able to support, without failure, the total of the following loads:

((-) (a) At least two loads of two hundred and fifty pounds each, concentrated between any two consecutive attachments.

((-) (b) Any additional concentrated loads of two hundred and fifty pounds each determined from the anticipated use of the ladder.

((-) (c) Anticipated loads caused by all of the following that apply:

((■) (i) Ice buildup.

((■) (ii) Winds.

((■) (iii) Rigging attached to the ladder, including the load to be lifted.

((■) (iv) Impact loads resulting from the use of ladder safety devices.

((\*) (2) You must make sure the design of rails, supports, and fastenings includes:

((-) (a) Live loads to be supported by the ladder; and

((-) (b) The weight of the ladder and everything attached to it.

((\*) (3) You must consider all live loads to be concentrated at the point or points that will cause the maximum stress on the ladder or structural member.

((\*) (4) You must make sure each step or rung is capable of supporting a single concentrated load of at least two hundred fifty pounds applied in the middle of the step or rung.

((\*) (5) You must make sure the design stresses for wood components of ladders meet the requirements and specifications of ANSI A14.1, American National Standard for Ladders-Portable Wood-Safety Requirements, in effect when the ladder was installed.

((\*) (6) You must make sure fastenings are designed to meet the ladder load requirements.

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60015 Pitch.** You must(=

•) make sure the pitch of the ladder is no greater than ninety degrees from the horizontal.

Notes: ((\*) 1. The preferred pitch of fixed ladders is within the range of seventy-five to ninety degrees from the horizontal. Ladders with a pitch range of sixty to seventy-five degrees from the horizontal are considered substandard and are only permitted if necessary to meet the installation requirements.

((\*) 2. Fixed stairs are an alternative for installations where a pitch angle of less than sixty degrees is necessary. See Fixed industrial stairs, WAC 296-24-765, in the General Safety and Health Standards, chapter 296-24 WAC.

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60020 Welding.** You must(=

•) make sure welding meets the requirements of the ANSI A14.3, American National Standard for Ladders-Fixed-Safety Requirements, in effect at the time the ladder was installed.

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60025 Ladder surfaces.** You must(=

•) make sure all parts and surfaces of the ladder are free of splinters, sharp edges, burrs, or projections that may be hazardous to persons using the ladder.

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60030 Rungs, cleats and steps. (1)** You must(=

•) make sure rungs have a minimum diameter as follows:

((-) (a) Rungs of wood ladders are at least one and one-eighth inches.

((-)) (b) Rungs of metal ladders subject to unusually corrosive exposures, such as individual metal rungs imbedded in concrete which serve as access to pits and to other areas under floors, are at least one inch.

((-)) (c) Rungs of all other metal ladders are at least three-quarters inch.

((\*) (2) You must make sure rungs, cleats, and steps are all of the following:

((-)) (a) Parallel.

((-)) (b) Level.

((-)) (c) Uniformly spaced throughout the length of the ladder.

((-)) (d) Spaced so the distance from the centerline of one rung to the centerline of the next rung does not exceed twelve inches.

**Exception:** The vertical distance from the ground, floor, or roof at the access level to the first rung may be adjusted within a range of fourteen inches.

(3) You must((=

(\*) make sure the minimum inside clear width of the stepping surface of rungs, steps, or cleats is sixteen inches.

((\*) (4) You must make sure individual rung or step-type ladders have rungs or steps that are shaped so that a person's foot cannot slide off the end.

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60035 Side rails.** (1) You must((=

(\*) make sure the shape of the side rail:

((-)) (a) Provides an adequate gripping surface; and

((-)) (b) Is uniform throughout the length of climb.

((\*) (2) You must make sure a side rail that has been spliced to obtain a longer length is at least equivalent in strength to a one-piece side rail made of the same material.

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60040 Clearances.** (1) You must((=

(\*) make sure ladders without wells or cages are at least thirty inches from the nearest permanent object on the climbing side, measured perpendicular to the ladder from the centerline of the rungs, cleats, or steps.

**((Exemption\*))**  
**EXEMPTION:** When unavoidable obstructions are encountered, the minimum perpendicular clearance between the centerline of the rungs, cleats, or steps and an obstruction on the climbing side may be reduced to twenty-four inches if a deflection device is installed to guide persons around the obstruction.

(2) You must((=

(\*) make sure ladders without wells or cages have a clear width from the nearest permanent object on each side of the ladder of at least fifteen inches, measured from the center of the rungs, cleats, or steps.

((\*) (3) You must make sure the distance from the centerline of the rungs, cleats, or steps to the nearest permanent object in back of the ladder is at least seven inches.

**((Exemption\*))**  
**EXEMPTION:** Fixed ladders in elevator pits may reduce the minimum clearance from the ladder to the nearest permanent object in back of the ladder to four and one-half inches.

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60045 Step-across distance.** (1) You must((=

(\*) make sure a through ladder at the point of access or egress has a step-across distance, measured from the centerline of the steps or rungs to the nearest edge of the landing area, that is:

((-)) (a) Not less than seven inches; or

((-)) (b) Greater than twelve inches.

((\*) (2) You must make sure a side-step ladder at the point of access or egress has a step-across distance, measured from the side rail of the ladder to the nearest edge of the landing area, that is:

((-)) (a) Not less than seven inches; or

((-)) (b) Greater than twelve inches.

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60050 Extensions and grab bars.** (1) You must((=

(\*) make sure the side rails of through or side-step ladders extend forty-two inches above the top of the access level or landing platform.

**Note:** For a parapet ladder, the access level is:  
((-) 1. The roof if the parapet is cut to permit passage through it; or  
((-) 2. The top of the parapet if it is continuous and uncut.

(2) You must((=

(\*) make sure the extension of a through ladder above the access level or landing platform has:

((-)) (a) Steps or rungs omitted from the extension; and

((-)) (b) Clearance between the side rails that is:

((\*) (i) Not less than twenty-four inches; or

((\*) (ii) Greater than thirty inches.

**((Exemption\*))**  
**EXEMPTION:** The maximum clearance between side rails of the extension may be increased to thirty-six inches if the ladder has a ladder safety device.

(3) You must((=

(\*) make sure the side rails of through or side-step ladders extend forty-two inches above the top of the access level or landing platform.

((\*) (4) You must make sure side-step ladders have the steps or rungs and the side rails continuous in the extension.

((\*) (5) You must make sure individual rung-step ladders are extended at least forty-two inches above the access level or landing platform by:

((-)) (a) Continuing the rung spacings as horizontal grab bars; or

((-)) (b) Providing vertical grab bars that have the same lateral spacing as the vertical legs of the rungs.

**(Exemption)** Extensions are not required for individual rung-step ladders with access openings through a manhole or hatch.  
**EXEMPTION:**

(6) You must((=

- ) make sure grab bars:

((-) (a) Are at least four inches from the nearest permanent object in back of the grab bar, measured from the centerline of the grab bar; and

((-) (b) Do not extend beyond the rungs on the climbing side of the ladder.

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60055 Hatches.** (1) You must((=

- ) make sure counterbalanced hatch covers open at least seventy degrees from the horizontal.

((•) (2) You must make sure the inside clear width of the hatch is a nominal thirty inches.

((•) (3) You must make sure the distance from the centerline of the rungs or cleats to the edge of the hatch opening on the climbing side, measured perpendicular to the ladder, is:

((-) (a) Not less than twenty-four inches; or

((-) (b) Greater than thirty inches.

((•) (4) You must make sure hatches with clearance on the climbing side of the ladder that is between twenty-four and twenty-seven inches are fitted with a deflector plate mounted at an angle of sixty degrees from the horizontal.

Note: The springs or other counterbalance mechanisms for the hatch may project into the hatch opening provided they do not reduce clearance to less than twenty-four inches and a deflector plate is installed to guide persons around the obstruction.

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60060 Platforms.** (1) You must((=

- ) make sure landing platforms for side-step ladders extend at least thirty inches on the climbing side of the ladder.

((•) (2) You must make sure landing platforms are:

((-) (a) At least thirty inches wide; and

((-) (b) Equipped with standard railings and toeboards placed to allow safe access to the ladder.

Reference: Requirements for standard railings and toeboards are in Railing, toeboards, and cover specifications, WAC 296-24-75011, the General Safety and Health Standards, chapter 296-24 WAC.

(3) You must((=

- ) make sure the top rung or step of the ladder is level with the landing served by the ladder.

((•) (4) You must make sure the spacing from the landing platform to the first rung below the platform of a through ladder is the same as the rung spacing of the ladder.

((•) (5) You must make sure, if two or more separate ladders are used to reach an elevated work area, that the ladders are offset with a platform or landing between them.

**(Exemption)** A platform or landing is not required when a portable ladder is used to reach a fixed ladder on structures such as utility towers and billboards where the bottom of the fixed ladder is elevated to limit access.  
**EXEMPTION:**

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60065 Protective structures and equipment.** (1) You must((=

- ) make sure a cage, well, or ladder safety system is provided if:

((-) (a) The length of climb is less than twenty-four feet; and

((-) (b) The top of the ladder is more than twenty-four feet above the ground, floor, or roof.

((•) (2) You must make sure a ladder with a single length of climb that is equal to or greater than twenty-four feet is either:

((-) (a) Equipped with a ladder safety device; or

((-) (b) Uses multiple ladder sections and meets all of the following:

((•) (i) Each section is provided with a cage or well.

((•) (ii) The length of climb of any ladder section is not greater than fifty feet.

((•) (iii) Each ladder section is offset from adjacent sections.

((•) (iv) Landing platforms are provided at maximum intervals of fifty feet.

**(Exemption)** During construction activities, a self-retracting lifeline with landing platforms provided at maximum intervals of one hundred ((and) fifty feet may be used instead of a ladder safety device or multiple ladder sections.  
**EXEMPTION:**

**AMENDATORY SECTION** (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60070 Cages.** (1) You must((=

- ) make sure the cage meets all of the following:

((-) (a) Extends at least forty-two inches above the top of the platform or above the point of access and egress at the top of the ladder.

((-) (b) Has provisions for accessing and egressing the platform or the point of access or egress of the ladder.

((-) (c) There is at least twenty-seven inches, but not more than thirty inches, from the cage to the centerline of the step or rung at all points except where the cage flares at the bottom of the ladder.

((-) (d) The cage is at least twenty-seven inches wide.

((-) (e) There are no projections inside the cage.

((•) (2) You must make sure the bottom of the cage is:

((-) (a) At least seven feet but not more than eight feet above the point of access to the bottom of the ladder; and

((-) (b) Flared at least four inches all around within the distance between the bottom horizontal band and the next higher band.

((•) (3) You must make sure vertical bars are:

((-) (a) Spaced at intervals of nine and one-half inches or less on center around the circumference of the cage; and

((-) (b) Fastened to the inside of the horizontal bands.

((\*) (4) You must make sure the horizontal bands meet all of the following:

- ((-) (a) The vertical intervals between horizontal bands ~~((is))~~ are not more than four feet on center.
- ((-) (b) The horizontal bands of ladders with side rails are fastened to the side rails.
- ((-) (c) The horizontal bands of individual-rung ladders are fastened directly to the structure, building, or equipment.

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60075 Wells.** (1) You must((-\*) make sure there is at least twenty-seven inches, but not more than thirty inches, from the centerline of the step or rung to the inside face of the well on the climbing side of the ladder.

- ((\*) (2) You must make sure the inside clear width is at least thirty inches.
- ((\*) (3) You must make sure the well:
  - ((-) (a) Completely encircles the ladder; and
  - ((-) (b) Is free of projections.
- ((\*) (4) You must make sure the bottom of the wall on the access side is at least seven feet, but not more than eight feet, above the point of access to the bottom of the ladder.

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-60080 Ladder safety devices.** (1) You must((-\*)

- make sure ladder safety devices and related support systems meet all of the following:
  - ((-) (a) Are capable of withstanding, without failure, the test drop of a five-hundred-pound weight for a free-fall distance of eighteen inches.
  - ((-) (b) The device does not require a person to continually hold, push, or pull any part of the device and allows them to have both hands free to grip the ladder.
  - ((-) (c) In the event of a fall, the device:
    - ((\*) (i) Is activated within two feet; and
    - ((\*) (ii) Limits the fall velocity to seven feet per second or less.
  - ((-) (d) Uses a connection between the carrier or lifeline and the point of attachment on the full body harness that is not longer than nine inches.
- ((\*) (2) You must make sure ladder safety devices with rigid carriers have mountings that:
  - ((-) (a) Are attached at each end of the carrier; and
  - ((-) (b) Have intermediate mountings that are all of the following:
    - ((\*) (i) Spaced along the entire length of the carrier in accordance with the manufacturer's recommendations.
    - ((\*) (ii) Installed within one foot below each splice on the carrier.
    - ((\*) (iii) Have a maximum distance between mountings that is twenty-five feet or less.
- ((\*) (3) You must make sure ladder safety devices with flexible carriers have:
  - ((-) (a) Mountings that are attached at each end of the carrier; and

((-) (b) Cable guides that are spaced at least twenty-five feet, but no further than forty feet, apart along the entire length of the carrier.

((\*) (4) You must make sure the design and installation of mountings and cable guides does not reduce the design strength of the ladder.

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-700 Fixed ladders inspection and maintenance(~~Section contents~~).**

Summary

**Your responsibility:** To make sure fixed ladders are inspected and maintained properly.

~~((Protection against corrosion and deterioration-~~

~~WAC 296-876-70005~~

~~Inspection and repair-~~

~~WAC 296-876-70010)~~

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Protection against corrosion and deterioration</u>	<u>WAC 296-876-70005</u>
<u>Inspection and repair</u>	<u>WAC 296-876-70010</u>

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-70005 Protection against corrosion and deterioration.** (1) You must((-\*)

- paint or otherwise treat metal ladders or metal parts to resist rust and corrosion if they are:
  - ((-) (a) Exposed to the elements; or
  - ((-) (b) Located where rust or corrosion could be expected.
- ((\*) (2) You must treat wood ladders used in conditions where decay may occur with a nonirritating preservative.
- ((\*) (3) You must make sure wood ladders are not coated with an opaque covering except for the minimum amount necessary for identification and warning information which may be placed on one face only of a side rail.
- ((\*) (4) You must treat the interface between different materials or use other means to prevent:
  - ((-) (a) One material from damaging or having a harmful effect on another material; and
  - ((-) (b) Electrolytic action between dissimilar metals.

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-70010 Inspection and repair.** (1) You must((-\*)

- keep ladders in safe condition.
- ((\*) (2) You must have a competent person inspect a ladder for visual defects:
  - ((-) (a) Periodically; and
  - ((-) (b) After any occurrence that could affect safe use.

((\*) (3) You must make sure any ladder with structural damage or other hazardous defect is immediately removed from service.

- Notes:
- ((\*) 1. Structural damage includes, but is not limited to, any of the following:
    - ((-) a. Broken or missing rungs, cleats, or steps.
    - ((-) b. Broken or split rails.
    - ((-) c. Corroded components.
    - ((-) d. Bolts and welds missing or not secure.
  - ((\*) 2. A ladder is considered to be removed from service if any of the following are done:
    - ((-) a. It is marked to identify it as defective.
    - ((-) b. It is tagged with "do not use" or similar language.
    - ((-) c. It is blocked so that it cannot be used, for example, by using a plywood attachment that spans several rungs.

(4) You must((- \*)) make sure repairs restore the ladder to a condition meeting its original design criteria.

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-800 Fixed ladder use(~~Section contents~~)).**

Summary

**Your responsibility:** To use fixed ladders safely.

~~((Designed load:~~

~~WAC 296-876-80005~~

~~Climbing and descending:~~

~~WAC 296-876-80010))~~

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Design load</u>	<u>WAC 296-876-80005</u>
<u>Climbing and descending</u>	<u>WAC 296-876-80010</u>

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-80005 Designed load.** You must((- \*

)) make sure not to overload ladders. Do not exceed either the:

((-) (1) Maximum intended load; or

((-) (2) Manufacturer's rated capacity.

~~((Definition:~~

~~The **maximum intended load** is the total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a ladder or ladder component at any one time.))~~

AMENDATORY SECTION (Amending WSR 06-16-020, filed 7/24/06, effective 12/1/06)

**WAC 296-876-80010 Climbing and descending. (1)**

You must((- \*

)) have both hands free to hold on to the ladder.

((\*) (2) You must face the ladder when climbing or descending.

((\*) (3) You must keep ladders free of oil, grease, or other slippery materials.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-876-900 Definitions.

NEW SECTION

**WAC 296-878-099 Definitions.**

**Anchor, window-cleaner's belt.** Fall-preventing attachment points for direct attachment of the terminal portion of a window-cleaner's belt.

**Belt terminal.** That part of the safety belt that is attached to the anchor during the window-cleaning operation.

**Block and tackle.** A lifting device consisting of one or more pulley blocks reeved with chains, wire ropes, or fiber ropes used solely for raising and lowering a load or moving a load horizontally.

**Boatswain's chair.** A single-point adjustable suspension scaffold consisting of a seat or sling designed to support one worker in a sitting position.

**Capstan device.** An upright, spool-shaped cylinder used for hoisting or lifting weights that is turned by a motor or by hand.

**Carabiner.** An oblong metal ring with an openable spring-hinged side, used to clip a rope to an anchoring device.

**Competent person.** One who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

**Drop (drop zone).** A vertical area or work zone accessed by the worker or piece of equipment during one descent.

**Drop line.** A vertical line from a fixed anchorage, independent of the work surface.

**Fixture.** Attachments, anchors, anchorages, tie backs or support equipment permanently dedicated to a given site.

**Grade.** Means the ground, floor, sidewalk, roof, or any level surface that is considered a safe place to work.

**Lanyard.** A flexible line to secure a wearer of a safety belt or harness to a drop line, lifeline or fixed anchorage.

**Mullion.** A slender, vertical dividing bar between windows, panels, etc.

**Primary support/suspension.** A working line or approved anchorage used for attachment of a working line.

**Qualified person.** A person is qualified if they have one of the following:

(1) Extensive knowledge, training, and experience about the subject matter, work, or project;

(2) A recognized degree, certificate, or professional standing;

(3) Successful demonstration of problem solving skills in connection with the subject, work, or project.

**Rated capacity.** The combined weight of workers, tools, equipment, and other materials that the device is designed and installed to lift and support.

**Rope descent system (RDS).** An assembly of components that allows the operator to control the rate of descent at any time. A rope descent system includes the following components:

- (1) Suspension devices;
- (2) Certified roof anchorages;
- (3) Primary support ropes or lines;
- (4) The descent device;
- (5) Carabiners or shackles;
- (6) A seatboard or boatswain's chair.

**Terminal strap.** The strap or rope attached to the waist band on one end, and to the belt terminals on the other end.

**Window cleaning.** Cleaning, wiping, restoring or other methods of cleaning windows.

**Working line.** A rope suspended from an anchorage and used to access parts of a building.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

**WAC 296-878-10005 Summary.**

**Your responsibility:** Make sure workers clean windows safely, and properly use and maintain their window-cleaning equipment.

~~((**IMPORTANT:**))~~ **Important:**

Window-cleaning equipment includes window-cleaner's belts, boatswains' chairs, rope descent systems, ladders, supported scaffolds, and the support equipment used to suspend employees cleaning windows.

~~((**You must:**))~~

**Training**

Train workers to use window-cleaning equipment

~~WAC 296-878-11005~~

**Building surfaces and fixtures**

Make sure building surfaces and fixtures are safe to use

~~WAC 296-878-12005~~

**Inspection procedures**

Inspect the area to be cleaned

~~WAC 296-878-13005~~

Inspect window-cleaning equipment before use

~~WAC 296-878-13010~~

~~**Develop site-specific service and emergency plans**~~

~~Develop a site-specific service and emergency recovery plan for window-cleaning operations~~

~~WAC 296-878-14005~~

**Equipment**

Select and use appropriate equipment

~~WAC 296-878-15005~~

Select appropriate rope for suspended equipment

~~WAC 296-878-15015~~

Select appropriate carabiners

~~WAC 296-878-15020~~

Use fall protection equipment

~~WAC 296-878-15025~~

**Warning signs and barricades**

Provide warning signs and barricades when suspended equipment is used

~~WAC 296-878-16005~~

~~**Power-line clearances**~~

~~Maintain clearance between window cleaners and power lines~~

~~WAC 296-878-17005~~

~~**Window cleaners' belts and anchors**~~

~~Select appropriate window cleaners' belts and anchors~~

~~WAC 296-878-18005~~

~~Inspect the anchors you plan to use for window-cleaning~~

~~WAC 296-878-18010~~

~~Use window cleaners' belts safely~~

~~WAC 296-878-18015~~

~~Move safely on the outside of buildings~~

~~WAC 296-878-18020~~

~~**Boatswains' chairs**~~

~~Select appropriate boatswains' chairs~~

~~WAC 296-878-19005~~

~~Safely use boatswains' chairs rigged with a block and tackle~~

~~WAC 296-878-19010~~

~~**Rope descent systems**~~

~~Select appropriate rope descent systems~~

~~WAC 296-878-20005~~

~~Safely use rope descent systems~~

~~WAC 296-878-20010~~

~~Safely use rope descent devices~~

~~WAC 296-878-20015~~

~~**Equipment prohibited**~~

~~Prohibit equipment from use~~

~~WAC 296-878-21005~~

~~**Definitions**~~

~~WAC 296-878-220.))~~

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-110 Training.**

Summary

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Train workers to use window-cleaning equipment</u>	<u>WAC 296-878-11005</u>

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-11005 Train workers to use window-cleaning equipment. (1) You must((**

**•))** provide the following training to workers before they use window-cleaning equipment on the job:

((-)) **(a)** Proper care and maintenance of the equipment;

((-)) **(b)** Review manufacturer's instructions for proper equipment use;

((-)) **(c)** Methods for inspection, assembly, and dismantling of components;

((-)) **(d)** Identify anchorages;

((-)) **(e)** A complete understanding of safe working conditions;

((-)) **(f)** How employees will be rescued.



(\*) (2) You must provide additional training to workers using window-cleaners' belts in all the following areas:

- (-) (a) How to select the proper-sized belt;
- (-) (b) How to use anchors and terminals;
- (-) (c) How to deal with obstructions and slippery/wet surfaces.

(\*) (3) You must provide additional training to workers using boatswains' chairs and rope descent systems in all the following areas:

- (-) (a) Proper rigging practices;
- (-) (b) Fall arrest requirements;
- (-) (c) Proper methods of descending;
- (-) (d) The effects of wind on window-cleaning operations when a worker is suspended;
- (-) (e) Proper methods of hoisting for ascents.

(\*) (4) You must document the training by recording all of the following:

- (-) (a) The name and signature of the trainer/educator;
- (-) (b) The name and signature of the student;
- (-) (c) The subjects in which the workers were trained;
- (-) (d) The date of the training;
- (-) (e) The location of the training.

Note: (\*) You do not need a specialized educator to provide training. You may use a qualified person to conduct the training. A qualified person is defined as a person who has:

- (-) 1. Extensive knowledge, training, and experience about the subject matter, work, or project;
- (-) 2. A recognized degree, certificate, or professional standing;
- (-) 3. Successful demonstration of problem solving skills in connection with the subject, work, or project.

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-120 Building surfaces and fixtures.**  
**Summary**

<b>You must meet the requirements...</b>	<b>in this section:</b>
<u>Make sure building surfaces and fixtures are safe to use</u>	<u>WAC 296-878-12005</u>

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-12005 Make sure building surfaces and fixtures are safe to use.** You must(†

- \*) make sure building surfaces and fixtures are safe to be used before you begin the window-cleaning operation. This includes:
  - (-) (1) Guardrails, parapets, cornices and other building surfaces used to support suspended loads;
  - (-) (2) Permanently installed fixtures used as anchorages and tiebacks;
  - (-) (3) Window-cleaning equipment support systems permanently dedicated to the building.

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-130 Inspection procedures.**  
**Summary**

<b>You must meet the requirements...</b>	<b>in this section:</b>
<u>Inspect the area to be cleaned</u>	<u>WAC 296-878-13005</u>
<u>Inspect window-cleaning equipment before use</u>	<u>WAC 296-878-13010</u>

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-13005 Inspect the area to be cleaned.**

- (1) You must(†
  - \*) inspect the building before cleaning to make sure there are no areas that can damage worker fall protection equipment and window-cleaning equipment. Inspect:
    - (-) (a) Sharp edges of parapets;
    - (-) (b) Window frames;
    - (-) (c) Open projected windows;
    - (-) (d) Cornices;
    - (-) (e) Overhangs;
    - (-) (f) Any other areas that may abrade, sever, weaken, or damage the equipment.
  - (\*) (2) You must make sure all working surfaces are safe and free from hazards such as:
    - (-) (a) Grease;
    - (-) (b) Oil;
    - (-) (c) Other slippery substances.

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-13010 Inspect window-cleaning equipment before use.** (1) You must(†

- (†) store your window-cleaning equipment in a way that:
  - (\*) (a) Is easy to get to, inspect, and safely take out for use;
  - (\*) (b) Provides protection from moisture, sunlight, or corrosion.
- (2) You must make sure a competent person inspects these items before each use:
  - (\*) (a) Window-cleaners' belts;
  - (\*) (b) Boatswains' chairs;
  - (\*) (c) All components of rope descent systems;
  - (\*) (d) Suspension devices;
  - (\*) (e) Certified roof anchorages;
  - (\*) (f) Primary support ropes or lines;
  - (\*) (g) The descent device;
  - (\*) (h) Carabiners or shackles;
  - (\*) (i) A seatboard or boatswain's chair;
  - (\*) (j) Wear points on rope descent system components exposed to constant friction.
- (3) You must make sure you do not use any piece of window-cleaning equipment with defects.

((\*) (a) Prohibit makeshift repairs to any piece of window-cleaning equipment;

((\*) (b) Label any piece of window-cleaning equipment that is defective "dangerous, do not use."

(4) You must secure any padding or softeners so they do not come loose from:

((\*) (a) The surface of the building;

((\*) (b) The rope if not attached to the building.

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-140 Develop site-specific service and emergency plans.**

**Summary**

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Develop a site-specific service and emergency recovery plan for window-cleaning operations</u>	<u>WAC 296-878-14005</u>

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-14005 Develop a site-specific service and emergency recovery plan for window-cleaning operations.** (1) You must((+)

(+) make sure that a qualified person develops a written plan for each location to be cleaned that identifies:

((-) (a) Hazardous areas;

((-) (b) Drop zones;

((-) (c) Safety features;

((-) (d) Methods for emergency recovery of workers working from suspended equipment, or other types of installations, in the event of equipment failure or any other kind of disability.

((\*) (2) You must keep the plan at the work site during the entire cleaning operation.

Note: You may use an outside service for rescue and recovery (such as a fire department) if:

((\*) 1. The rescue personnel will be able to reach the victims without undue delay;

((\*) 2. They have the necessary equipment to retrieve the victims;

((\*) 3. They are trained and proficient in high angle rescue techniques.

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-150 Equipment.**

**Summary**

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Select and use appropriate equipment</u>	<u>WAC 296-878-15005</u>

<u>You must meet the requirements...</u>	<u>in this section:</u>
<u>Select appropriate rope for suspended equipment</u>	<u>WAC 296-878-15015</u>
<u>Select appropriate carabiners</u>	<u>WAC 296-878-15020</u>
<u>Use fall protection equipment</u>	<u>WAC 296-878-15025</u>

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-15005 Select and use appropriate equipment.** (1) You must((+)

(+) make sure that all equipment provided to workers for window-cleaning operations is engineered, designed, and intended for use in commercial applications.

Note: Equipment that is designed or labeled for recreational use or rescue use only is prohibited for use in window-cleaning operations.

(2) You must((+)

(+) make sure that the window-cleaning equipment is not altered unless it is specifically approved in writing by the original manufacturer or a registered professional engineer.

(3) You must provide manufacturer's instructions to employees for all window-cleaning equipment they will use.

Reference: Use Table 1 for other window-cleaning equipment requirements.

**Table 1  
Other Window-Cleaning Equipment**

	<u>If you use:</u>	<u>Then follow all requirements in:</u>
((+))	Portable ladders	WAC ((296-800-290, Portable ladders)) 296-800-876, Ladders portable and fixed
((2-))	Supported scaffolds	Chapter 296-24 WAC, ((PART J-2,)) Scaffolds
((3-))	Suspension ropes and lifelines Powered and manual hoists Suspended scaffold equipment	Chapter 296-24 WAC, ((PART J-2,)) Scaffolds
((4-))	Single and multipoint adjustable suspension scaffolds	Chapter 296-24 WAC, ((PART J-2,)) Scaffolds
((5-))	Powered platforms	Chapter 296-24 WAC, PART J-3, Powered platforms

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-15015 Select appropriate rope for suspended equipment.** You must((+)

(+) make sure all rope used for suspended equipment has a minimum breaking strength of five thousand pounds.

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-15020 Select appropriate carabiners.**

- (1) You must((+
  - )) use carabiners for connecting hardware or attaching boatswains' chairs, descent devices, and lifelines to anchors.
  - ((+)) (2) You must use carabiners with a minimum tensile load of five thousand pounds.
  - ((+)) (3) You must make sure carabiners are either manual or auto-locking.

Note: You may secure a rope to an anchor with a knot if normal daily use of the rope will not decrease its initial breaking strength below five thousand pounds.

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-15025 Use fall protection equipment.**

- (1) You must((+
  - ((+)) make sure the fall arrest system meets the requirements of WAC 296-24-88050 mandatory Appendix C, Part I, Personal fall arrest systems.
  - ((+)) (2) You must use and inspect fall arrest equipment in accordance with the requirements of WAC 296-24-88050, mandatory Appendix C, Part I, Personal fall arrest systems.
  - ((+)) (3) You must make sure all workers suspended from a boatswain's chair or rope descent system use an independent fall arrest system where the fall arrest anchorage is separate from the suspension system anchorage.
  - ((+)) (4) You must make sure workers operating powered platforms wear and use a fall arrest system.
  - ((+)) (5) You must make sure workers assemble and wear their personal fall arrest equipment before they approach the point of suspension.
  - ((+)) (6) You must make sure workers are connected at all times to the fall arrest system while they are suspended.
  - ((+)) (7) You must make sure the boatswain's chair or rope descent system is connected at all times to the suspension line.

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-160 Warning signs and barricades.**

**Summary**

<b><u>You must meet the requirements...</u></b>	<b><u>in this section:</u></b>
<u>Provide warning signs and barricades when suspended equipment is used</u>	<u>WAC 296-878-16005</u>

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

- WAC 296-878-16005 Provide warning signs and barricades when suspended equipment is used.** (1) You must((+
  - ((+)) place warning signs below suspended equipment.

(2) You must block the ground area with barricades directly under or next to the work zone.

(3) You must assign a competent person to decide if additional protection is necessary.

(4) You must make sure all tools used by the worker are attached to the worker, seatboard, or boatswain's chair.

Reference: Rules for protecting workers from overhead hazards are listed in WAC 296-800-16055(-). Make sure your employees use appropriate head protection.

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-170 Power line clearances.**

**Summary**

<b><u>You must meet the requirements...</u></b>	<b><u>in this section:</u></b>
<u>Maintain clearance between window cleaners and power lines</u>	<u>WAC 296-878-17005</u>

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-17005 Maintain clearance between window cleaners and power lines.** (1) You must((+
 

- )) maintain clearances between window cleaners and power lines as indicated in Tables 2 and 3.

**Table 2**

**Minimum Clearances from Power Lines – Insulated Lines**

Voltage	Minimum distance	Alternatives
Less than 300 volts	3 feet (0.9 m)	----
300 volts to 50 kv	10 feet (3.1 m)	----
More than 50 kv	10 feet (3.1 m) plus 0.4 inches (1.0 cm) for each 1 kv over 50 kv	2 times the length of the line insulator, but never less than 10 feet (3.1 m)

**Table 3**

**Minimum Clearances from Power Lines – Uninsulated Lines**

Voltage	Minimum distance	Alternatives
Less than 50 kv	10 feet (3.1 m)	----
More than 50 kv	10 feet (3.1 m) plus 0.4 inches (1.0 cm) for each 1 kv over 50 kv	2 times the length of the line insulator, but never less than 10 feet (3.1 m)

(2) You must((+
 

- )) follow these procedures when window cleaners need to get closer to power lines than allowed in Tables 2 and 3:

((-)) (a) Notify the utility company or electrical system operator of the need to work closer than the minimum clearances to power lines before starting the work;

((-)) (b) Begin the work only when the utility company or electrical system operator has deenergized or relocated the

lines, or installed protective coverings to prevent accidental contact with the lines.

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-180 Window-cleaners' belts and anchors.**

**Summary**

<u>You must meet the requirements...</u>	<u>in this section:</u>
Select appropriate window-cleaners' belts and anchors	WAC 296-878-18005
Inspect the anchors you plan to use for window cleaning	WAC 296-878-18010
Use window-cleaners' belts safely	WAC 296-878-18015
Move safely on the outside of buildings	WAC 296-878-18020

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-18005 Select appropriate window-cleaners' belts and anchors.** You must((+)

- (+) make sure window-cleaners' belts and anchors conform to the:
  - (-) (1) Design, manufacture, and maintenance requirements of ANSI/IWCA 1-14.1-2001 (~~AND~~); and
  - (-) (2) Manufacturer's specifications.

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-18010 Inspect the anchors you plan to use for window cleaning.** (1) You must((+)

- (+) make sure you do not use anchors if they:
  - (-) (a) Appear to be damaged;
  - (-) (b) Appear deteriorated;
  - (-) (c) Appear to be worn;
  - (-) (d) Appear to be loose;
  - (-) (e) Appear to be unsecured to the building or window frame;
  - (-) (f) Will not allow the belt terminal to easily slip over the anchor head.
- (+) (2) You must use window-cleaner's belts only if:
  - (-) (a) The area to be cleaned is safe;
  - (-) (b) All anchors intended for use are safe.
- (+) (3) You must make sure window ledges and frames will not impair the safe use of the window-cleaner's belt.

Note: If unsafe anchors are found, report them to the building owner or manager and do not use them.

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-18015 Use window-cleaners' belts safely.** (1) You must((+)

(+) make sure workers do not extend more than one arm beyond the window sash when cleaning windows from inside a building.

(+) (2) You must attach one belt terminal to an anchor before you put more than one arm outside the window.

(+) (3) You must pull on the terminal strap and look for signs of damage to the anchor.

(+) (4) You must attach both belt terminals to anchors before climbing out the window.

(+) (5) You must keep all belt terminals attached during the entire cleaning operation.

(+) (6) You must make sure the worker keeps one terminal attached to an anchor when reentering the window and until the worker is inside.

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-18020 Move safely on the outside of buildings.** You must((+)

(+) make sure you travel on the outside of the building only when:

(-) (1) You keep at least one window-cleaner's belt terminal attached at all times;

(-) (2) The anchors are not more than forty-eight inches apart.

Note: Anchors can be up to seventy-two inches apart if:

- (+) 1. The sill or ledge is continuous;
- (+) 2. The sill or ledge is at least twelve inches wide;
- (+) 3. The sill or ledge has a slope less than five degrees;
- (+) 4. There is at least six inches of window sill in front of the mullions.

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-190 Boatswains' chairs.**

**Summary**

<u>You must meet the requirements...</u>	<u>in this section:</u>
Select appropriate boat-swains' chairs	WAC 296-878-19005
Safely use boatswains' chairs rigged with a block and tackle	WAC 296-878-19010

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-19005 Select appropriate boatswains' chairs.** (1) You must((+)

(+) make sure that when you use a block and tackle, it is the correct size, including:

(+) (a) Correctly((-)sized ball bearings or bushed blocks;

(+) (b) Safety hooks;

(+) (c) Eye-spliced rope;

((\*) (d) A minimum breaking strength of five thousand pounds.

(2) You must make sure all rope used with a boatswain's chair has a minimum breaking strength of five thousand pounds, including rope used for:

- ((\*) (a) Suspension;
- ((\*) (b) Block and tackle;
- ((\*) (c) Seat slings.

(3) You must make sure the ropes on boatswain's chair seat slings:

- ((\*) (a) Are reeved through the four corner holes in the seat;
- ((\*) (b) Cross each other on the underside of the seat;
- ((\*) (c) Are rigged so the chair cannot slip out of a level position.

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-19010 Safely use boatswains' chairs rigged with a block and tackle.** (1) You must((+)

((+)) make sure the rated capacity or the maximum intended load, whichever is less, is not exceeded.

(2) You must make sure the suspension rope stays vertical between the boatswain's chair and suspension device unless all of these requirements are met:

- ((\*) (a) The rigging has been designed by a qualified person;
- ((\*) (b) The scaffold can be easily reached by rescuers;
- ((\*) (c) The suspension rope is protected from damage when a change in direction occurs;
- ((\*) (d) The scaffold will not swing and contact another surface.

(3) You must make sure a suspension height of seventy-five feet above grade or building setback is not exceeded.

**(Exemptions) EXEMPTION:** Suspension height may be up to one hundred thirty feet above grade or building setback if the boatswain's chair block and tackle has all of the following:

- ((\*) 1. An automatic braking system;
- ((\*) 2. A design that minimizes the amount of force required to raise or lower the suspended worker;
- ((\*) 3. An automatic braking system that automatically maintains an elevation when no force is applied to the tackle;
- ((\*) 4. A system that does not slip.

(4) You must((+)

((+)) prohibit tying any kind of knot in a block and tackle system to maintain elevation.

(5) You must make sure another worker is stationed below any boatswain's chair rigged with a block and tackle who can assist the suspended employee.

(6) You must make sure workers do not attempt to increase the work area by swinging, swaying, or other maneuvers.

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-200 Rope descent systems.**

**Summary**

<b><u>You must meet the requirements...</u></b>	<b><u>in this section:</u></b>
<u>Select appropriate rope descent systems</u>	<u>WAC 296-878-20005</u>
<u>Safely use rope descent systems</u>	<u>WAC 296-878-20010</u>
<u>Safely use rope descent devices</u>	<u>WAC 296-878-20015</u>

**AMENDATORY SECTION** (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-20005 Select appropriate rope descent systems.** (1) You must((+)

(+)) make sure the rope descent system is designed, used, and maintained according to:

- ((-) (a) ANSI/IWCA 1-14.1-2001;
- ((-) (b) The manufacturer's instructions.

((\*) (2) You must make sure the rope descent system has been manufactured and is intended to be used for window cleaning.

Note: Equipment that is designed or labeled for recreational use or rescue use only is prohibited for use in window-cleaning operations.

(3) You must((+)

(+)) make sure the rope descent system components are compatible and have a minimum tensile strength of five thousand pounds. ((-) This does not apply to the seatboard.

((\*) (4) You must make sure the rope descent system has specific use instructions for each component.

**AMENDATORY SECTION** (Amending WSR 10-08-069, filed 4/6/10, effective 6/1/10)

**WAC 296-878-20010 Safely use rope descent systems.** (1) You must((+)

((+)) make sure workers use extreme care when using rope descent equipment around electrical service, heat sources, and turbulent areas, such as air vents.

(2) You must connect the seatboard or boatswain's chair to the descent device with a manual\_ or auto\_locking carabiner.

(3) You must make sure workers are positioned in the seatboard or boatswain's chair before being suspended.

(4) You must make sure workers do not reach more than six feet in any direction as measured from a centerline straight down from where the suspension rope bears on the building.

(5) You must make sure workers do not descend rapidly, swing excessively, or stop suddenly.

(6) You must make sure that, in addition to the suspended worker, there is one other person at the ((jobsite)) job site who is skilled in using the rope descent system and rescue procedures.

(7) You must make sure you do not exceed a three hundred-foot height of descent as measured from grade or building setback unless the windows cannot be safely and practicably accessed by other means.

(8) You must make sure your site-specific service plan addresses the following hazards for descents over one hundred thirty feet as measured from grade or building setback:

- ((\*) (a) Sudden weather changes, such as wind gusts, micro bursts, or tunneling wind currents;
- ((\*) (b) Inability of the rope descent system to function without using excessive force;
- ((\*) (c) Workers suspended for long periods of time;
- ((\*) (d) Rerigging and movement of main suspension and safety lines.

(9) You must stabilize workers suspended from a rope descent system whenever the descent is higher than one hundred thirty feet, as measured from grade or building setback.

(10) You must prohibit workers from working when wind speed makes any stabilization equipment ineffective.

Note: Provisions for stabilizing workers may include:  
 ((\*) 1. Continuous stabilization, such as mullion tracks;  
 ((\*) 2. Intermittent stabilization, such as detent pins/buttons;  
 ((\*) 3. Work station stabilization, such as suction cups.

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-20015 Safely use rope descent devices.**

- (1) You must make sure the rated capacity or the maximum intended load, whichever is less, is not exceeded.
- (2) You must make sure the descent device manufacturer's specifications for rope diameter and construction are followed.
- (3) You must make sure the rope is rigged through the descent device for a controlled rate of descent.
- (4) You must make sure the attachment point on the descent device is one piece with no gates or openings.
- (5) You must make sure the descent device will remain stationary when positive action is taken.

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-210 Equipment prohibited.**

Summary

<b><u>You must meet the requirements...</u></b>	<b><u>in this section:</u></b>
Prohibit equipment from use	<u>WAC 296-878-21005</u>

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

**WAC 296-878-21005 Prohibit equipment from use.**

- You must((\*)
- \*) prohibit use of the following equipment for window-cleaning operations:
    - ((-) (1) Portable sills;
    - ((-) (2) Window jacks;
    - ((-) (3) Capstan devices to suspend workers;
    - ((-) (4) Suspension or fall-arrest ropes that are made entirely of polypropylene.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-878-220 Definitions.

**WSR 14-01-089  
 PROPOSED RULES  
 DEPARTMENT OF  
 LABOR AND INDUSTRIES**

[Filed December 17, 2013, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-17-102.

Title of Rule and Other Identifying Information: Amending the elevator fees, chapter 296-96 WAC, Safety regulations and fees for all elevators, dumbwaiters, escalators and other conveyances.

Hearing Location(s): Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on January 22, 2014, at 1:00 p.m. For directions to the L&I office, see <http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/>.

Date of Intended Adoption: February 26, 2014.

Submit Written Comments to: Alicia Curry, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [Alicia.Curry@lni.wa.gov](mailto:Alicia.Curry@lni.wa.gov), fax (360) 902-5292, by 5 p.m. on January 22, 2014.

Assistance for Persons with Disabilities: Contact Alicia Curry by January 13, 2014, at [Alicia.Curry@lni.wa.gov](mailto:Alicia.Curry@lni.wa.gov) or (360) 902-6244.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: L&I was given the authority by 3ESSB Bill 5034, which passed the legislature in 2013, to increase the elevator fees by 13.1 percent.

Reasons Supporting Proposal: The elevator program's budget and projected revenue were evaluated and the 13.1 percent fee increase is necessary to support the program's expenditures which includes the addition of six new full-time employees (five inspectors and one technical specialist) as requested by the department.

For more information on this rule making, visit the L&I web site at <http://www.lni.wa.gov/TradesLicensing/Rules/ByTrade/Elevator/default.asp> or contact the individual below. Interested parties can sign up for e-mail updates at <http://www.lni.wa.gov/Main/ContactInfo/TradesLicensing/Elevators.asp>.

Statutory Authority for Adoption: Chapter 70.87 RCW and chapter 4, Laws of 2013 (3ESSB 5034).

Statute Being Implemented: Chapter 70.87 RCW and chapter 4, Laws of 2013 (3ESSB 5034).

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Day, Tumwater, Washington, (360) 902-6128; Imple-

mentation and Enforcement: Jose Rodriguez, Tumwater, Washington, (360) 902-6348.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

EXECUTIVE SUMMARY: The elevator program within L&I is proposing rule changes under chapter 296-96 WAC, Part B and Part B-1, regarding the safety regulation and fees for elevator and all other conveyances in the state of Washington. In this rule making, the program is proposing a 13.1 percent fee increase for all elevator related services, with the exception of the elevator penalty fees. The rate of increase was approved by ESSB [3ESSB] 5034 in the 2013 legislative session.

According to the Regulatory Fairness Act (RFA), RCW 19.85.030, an agency shall prepare a small business economic impact statement (SBEIS): (i) If the proposed rule will impose more than minor costs on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320. This report is prepared to determine whether the proposed elevator fee increases will impose more than minor costs and, if yes, whether the rule will impose disproportionate impact on small businesses.

Section 2 contains the results with regard to the comparison of costs in various elevator fees. Based on these analyses, the department concludes the proposed fee increases will not impose disproportionate impact on small businesses. In addition, the proposed rule as a whole will impose no more than minor costs<sup>1</sup> on the affected businesses. Therefore, an SBEIS is not required and this document is prepared for general information purposes only.

A complete copy of the statement may be obtained by contacting Alicia Curry, Legislative and Rules Coordinator, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6244, fax (360) 902-5292, e-mail Alicia.Curry@Lni.wa.gov.

<sup>1</sup>Minor cost is defined under RCW 19.85.020 as a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. It is evident that the cost per business as a result of these fee increases is much smaller than three-tenths of one percent of annual income or one percent of annual payroll of the affected businesses.

A copy of the statement may be obtained by contacting Alicia Curry, Legislative and Rules Coordinator, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6244, fax (360) 902-5292, e-mail Alicia.Curry@Lni.wa.gov. This rule is exempt from the SBEIS because the proposed changes will impose no more than minor costs on businesses in the affected industry and the agency was not requested to do so by the joint administrative rules review committee (see RCW 19.85.030(1)). An SBEIS document was prepared for general information purposes only.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Alicia Curry, Legislative and Rules Coordinator, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6244, fax (360) 902-5292, e-mail Alicia.Curry@Lni.

wa.gov. RCW 34.05.328 applies to the proposed rule pursuant to RCW 34.05.328 (5)(a)(i) as a significant legislative rule of L&I.

December 17, 2013  
Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-00922 What are the fees associated with licensing?** The following are the department's elevator license fees:

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Elevator contractor/mechanic application fee (not required for renewal of valid license)	Per application	\$(( <del>56.90</del> )) <u>64.30</u>
Elevator contractor/mechanic examination fee	Per application	\$(( <del>171.20</del> )) <u>193.60</u>
Reciprocity application fee((*))	Per application*	\$(( <del>56.90</del> )) <u>64.30</u>
Elevator mechanic license	2 years	\$(( <del>114.10</del> )) <u>129.00</u>
Elevator contractor license	2 years	\$(( <del>114.10</del> )) <u>129.00</u>
Temporary elevator mechanic license	30 days	\$(( <del>28.30</del> )) <u>32.00</u>
Elevator mechanic/contractor timely renewal fee((**))	2 years	\$(( <del>114.10</del> )) <u>129.00</u>
Elevator mechanic/contractor late renewal fee((***))	2 years	\$(( <del>228.40</del> )) <u>258.30</u>
Training provider application/renewal fee	2 years	\$(( <del>114.10</del> )) <u>129.00</u>
Continuing education course fee by approved training provider((****))	1 year**	Not applicable
Replacement of any licenses		\$(( <del>17.00</del> )) <u>19.20</u>
Refund processing fee		\$(( <del>34.10</del> )) <u>38.50</u>

\* Reciprocity application is only allowed for applicants who are applying for licensing based upon possession of a valid license that was obtained in state(s) with which the department has a reciprocity agreement.

((\*\*Renewals will be considered "timely" when the renewal application is received on or prior to the expiration date of the license.  
 \*\*\* Late renewal is for renewal applications received no later than ninety days after the expiration of the licenses. If the application is not received within ninety days from license expiration, the licensee must reapply and pass the competency examination.  
 \*\*\*) This fee is paid directly to the continuing education training course provider approved by the department.

**AMENDATORY SECTION** (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

**WAC 296-96-01005 When do I need and what are the steps in obtaining a permit?** (1) See WAC 296-96-01000 for the permit process.

(2) Construction and alteration permits are valid for one year from the date of issue. However, permits may be renewed if you:

- (a) Apply for a renewal permit before your current permit expires;
- (b) The department approves your request for a renewal permit; and
- (c) You pay a \$((~~51.60~~)) 58.30 renewal fee to the department for each permit you renew;
- (3) If your permit has expired you must reapply for a new permit.
- (4) See WAC 296-96-01006 for work requiring a permit.

**AMENDATORY SECTION** (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01010 What are the installation permit fees for conveyances, material lifts, and hoists and how are they calculated?** Installation permit fees are based on the total cost of the conveyance and the labor to install the conveyance. The following permit fees apply to the construction or relocation of all conveyances and material lifts:

TOTAL COST OF CONVEYANCE	FEE
\$0 to and including \$1,000 . . . . .	\$(( <del>56.90</del> )) <u>64.30</u>
\$1,001 to and including \$5,000. . . . .	\$(( <del>85.40</del> )) <u>96.50</u>
\$5,001 to and including \$7,000. . . . .	\$(( <del>142.60</del> )) <u>161.20</u>
\$7,001 to and including \$10,000. . . . .	\$(( <del>171.20</del> )) <u>193.60</u>
\$10,001 to and including \$15,000. . . . .	\$(( <del>228.40</del> )) <u>258.30</u>
OVER \$15,000 . . . . .	\$(( <del>319.80</del> )) <u>361.60</u> plus
Each additional \$1,000 or fraction thereof. . . . .	\$(( <del>7.90</del> )) <u>8.90</u>

**AMENDATORY SECTION** (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01012 What are the permit fees for alterations to conveyances, material lifts, and hoists and how are they calculated?** Permit fees are based on the total cost of the equipment, materials and labor to perform the

alteration. The following permit fees apply to the alteration of all conveyances and material lifts:

TOTAL COST OF ALTERATION	FEE
\$0 to and including \$1,000 . . . . .	\$(( <del>56.90</del> )) <u>64.30</u>
\$1,001 to and including \$5,000 . . . . .	\$(( <del>85.40</del> )) <u>96.50</u>
\$5,001 to and including \$7,000 . . . . .	\$(( <del>142.60</del> )) <u>161.20</u>
\$7,001 to and including \$10,000 . . . . .	\$(( <del>171.20</del> )) <u>193.60</u>
\$10,001 to and including \$15,000 . . . . .	\$(( <del>228.40</del> )) <u>258.30</u>
OVER \$15,000 . . . . .	\$(( <del>228.40</del> )) <u>258.30</u>
Each additional \$1,000 or fraction thereof. . . . .	\$(( <del>7.90</del> )) <u>8.90</u>

**AMENDATORY SECTION** (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01025 What is the permit fee for personnel and material hoists?** The fee for each personnel hoist or material hoist installation is . . . . . \$((~~228.40~~)) 258.30  
 See WAC 296-96-01035(2) for requirements for jumps.

**Note:** An operating certificate is also required for these types of conveyances.

**AMENDATORY SECTION** (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01027 Are initial installation permit fees refundable?** Your initial installation permit fees are refundable if the installation work has not been performed, minus a processing fee, unless your permits have expired. No refunds will be issued for expired permits. All requests for refunds must be submitted in writing to the elevator section and must identify the specific permits and the reasons for which the refunds are requested.

The processing fee for each refund is . . . . . \$((~~34.10~~)) 38.50

**AMENDATORY SECTION** (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01030 What is the process for installation and alteration plan approval?** Prior to the start of construction, the applicant must submit to the department for approval two copies of plans for new installations or major alterations. To be approved, the plan must comply with the latest adopted edition of the American Society of Mechanical Engineers (ASME), the National Electrical Code (NEC) and applicable Washington Administrative Codes (WAC). In addition, the plans must include all information necessary in determining whether each installation/alteration complies with all applicable codes. The permit holder must keep a copy of the approved plan on the job site until the department has witnessed all acceptance tests. Any alterations to the approved plan must be submitted to the department for



approval before a final inspection will be conducted. The nonrefundable fees for reviewing your plans are:

For each installation/major alteration. . . . ~~\$(28.30)~~ 32.00  
If more than two sets of plans are submitted, the fee for each additional set . . . . . ~~\$(41.20)~~ 12.60

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01035 Are there inspection fees?** Yes. The initial inspection(s) of a conveyance or for the initial inspection of construction, alteration or relocation of a conveyance is included with your permit fee. Once the department has approved the initial installation of the conveyance you will be issued a temporary operating certificate that is valid for 30 days. Prior to the expiration of the 30-day temporary operating certificate the application for an annual operating certificate and the appropriate fees must be paid to the department. Once the department has received the appropriate fees and application the owner will be issued the first annual operating certificate. The owner or owners' representative will receive an invoice from the department for renewal. The owner is required to renew the annual operating certificate yearly.

The following inspections require an additional inspection fee:

(1) **Reinspection.** If a conveyance does not pass an initial inspection and an additional inspection is required, the fee for each reinspection of a conveyance is ~~\$(114.10)~~ 129.00 per conveyance plus ~~\$(55.40)~~ 62.60 per hour for each hour in addition to the first hour.

The department may waive reinspection fees.

(2) **Inspecting increases in the height (jumping) of personnel and material hoists.**

The fee for inspecting an increase in the height (jumping) of each personnel hoist or material hoist is ~~\$(114.10)~~ 129.00 plus ~~\$(56.90)~~ 64.30 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

The permit holder may be allowed to operate a hoist prior to the jump inspection if:

- (a) The electrical limits will not allow the lift to operate above the previously inspected landing.
- (b) The state elevator inspector is contacted, agrees and can schedule within 3 days.

(3) **Variance inspections.**

(a) The fee for an on-site variance inspection is ~~\$(171.20)~~ 193.60 per conveyance plus ~~\$(56.90)~~ 64.30 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

(b) The fee for a variance that does not require an on-site inspection is ~~\$(56.90)~~ 64.30 per conveyance. The individual requesting the variance must provide the department with pictures, documentation, or other information necessary for the department to review the variance. The department may conduct an on-site variance inspection to verify the information provided or if it determines that an inspection is necessary. If an on-site variance inspection is performed, the fees in (a) of this subsection will apply.

(4) **"Red tag" status fee.** The annual fee for a conveyance in "Red tag" status is ~~\$(28.30)~~ 32.00.

**Note:** You must provide the department with written approval from the building official, indicating that the conveyance is not required for building occupancy, when you apply to have the conveyance placed in voluntary red tag status.

(5) **Decommission inspection.** The fee for performing a decommission inspection is ~~\$(56.90)~~ 64.30. Once the decommission inspection has been performed and approved, the conveyance will no longer require annual inspections until such time that the conveyance is brought back into service. Prior to operating the conveyance, a new inspection and annual operating permit must be obtained.

(6) **Voluntary inspections by request.** The owner or potential purchaser of a building within the department's jurisdiction may request a voluntary inspection of a conveyance. The fee for this inspection will be ~~\$(114.10)~~ 129.00 per conveyance and ~~\$(56.90)~~ 64.30 per hour for each hour in addition to 2 hours plus the standard per diem and mileage allowance granted to department inspectors. The owner/potential purchaser requesting the voluntary inspection will not be subject to any penalties based on the inspector's findings.

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01040 What is the fee for testing and inspecting regular elevators used as temporary elevators to provide transportation for construction personnel, tools, and materials only?** (1) The fee for the inspecting and testing of regular elevators used as temporary elevators is ~~\$(91.20)~~ 103.10, in addition to any other fees required in this chapter. This fee purchases a 30-day temporary use permit that may be renewed at the department's discretion.

(2) When this temporary use permit is purchased, a notice declaring that the equipment has not received final approval from the department must be conspicuously posted in the elevator.

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01045 What are the inspection requirements and fees for conveyances in private residences?** (1) Chapter 70.87 RCW requires the department to inspect all new, altered or relocated conveyances operated exclusively for single-family use in private residences. Prior to installation, a licensed elevator contractor must complete a permit application as described in WAC 296-96-01005 and pay the appropriate fee listed in WAC 296-96-01010.

(2) Chapter 70.87 RCW allows the department to inspect conveyances operated exclusively for single-family use in private residences when the department is investigating an accident or an alleged or apparent violation of the statute or these rules.

(3) No annual inspection and operating certificate is required for a private residence conveyance operated exclusively for single-family use unless the owner requests it. When an owner requests an inspection and an annual operat-

ing certificate, the following fee must be paid prior to an inspection:

TYPE OF CONVEYANCE	FEE
Each inclined stairway chair lift in private residence .....	\$(( <del>26.60</del> )) <u>30.00</u>
Each inclined wheel chair lift in a private residence .....	\$(( <del>26.60</del> )) <u>30.00</u>
Each vertical wheel chair lift in a private residence .....	\$(( <del>33.50</del> )) <u>37.80</u>
Each dumbwaiter in a private residence. ....	\$(( <del>26.60</del> )) <u>30.00</u>
Each inclined elevator at a private residence. . . .	\$(( <del>94.90</del> )) <u>107.30</u>
Each private residence elevator .....	\$(( <del>61.10</del> )) <u>69.10</u>
Duplication of a lost, damaged or stolen operating permit .....	\$(( <del>11.20</del> )) <u>12.60</u>

**AMENDATORY SECTION** (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01050 How do I get a supplemental inspection?** Any person, firm, corporation or governmental agency can request a supplemental inspection from the department by paying a fee of \$((~~68.40~~)) 77.30 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. This fee is for inspections occurring during regular working hours.

**AMENDATORY SECTION** (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01055 Are technical services available and what is the fee?** You may request elevator field technical services from the department by paying a fee of \$((~~68.40~~)) 77.30 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. These field technical services may include code evaluation, code consultation, plan examination, code interpretation and clarification of technical data relating to the application of the department's conveyance rules. Field technical services do not include inspections.

**AMENDATORY SECTION** (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01057 Does the department charge a fee to perform investigations and what is the fee?** An elevator inspector may charge at a rate of \$((~~68.40~~)) 77.30 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. These services shall include accident investigation relating to any and all accidents. This fee would include an inspection as required during the accident investigation.

**AMENDATORY SECTION** (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01060 Can I request an after-hours inspection and what is the fee?** You may request an inspection outside of normal business hours, which are 7:00 a.m. to 5:00 p.m., if an inspector is available and the inspection is authorized by the department. The minimum fee for an after-hours inspection is \$((~~85.40~~)) 96.50 and \$((~~85.40~~)) 96.50 per hour for each hour in addition to the first hour plus the standard per diem and mileage allowance granted to department inspectors. This fee is in addition to any other fees required for your project.

**AMENDATORY SECTION** (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

**WAC 296-96-01065 What are the annual operating certificate fees?** An annual operating certificate will be issued to you upon payment of the appropriate fee. The owner of record will be invoiced by the department. If a change of owner has occurred, it is the new owner's responsibility to ensure the department has the corrected information. Below is the fee structure table:

TYPE OF CONVEYANCE	FEE
Each hydraulic elevator .....	\$(( <del>144.10</del> )) <u>129.00</u>
Each roped-hydraulic elevator .....	\$(( <del>142.60</del> )) <u>161.20</u>
plus for each hoistway opening in excess of two .....	\$(( <del>11.20</del> )) <u>12.60</u>
Each cable elevator. ....	\$(( <del>142.60</del> )) <u>161.20</u>
plus for each hoistway opening in excess of two .....	\$(( <del>11.20</del> )) <u>12.60</u>
Each cable elevator traveling more than 25 feet without an opening—for each 25 foot traveled. ....	\$(( <del>11.20</del> )) <u>12.60</u>
Each limited-use/limited-application (—LULA) elevator. ....	\$(( <del>144.10</del> )) <u>129.00</u>
Each escalator. ....	\$(( <del>94.80</del> )) <u>107.20</u>
Each dumbwaiter in other than a private residence. ....	\$(( <del>61.10</del> )) <u>69.10</u>
Each material lift .....	\$(( <del>144.10</del> )) <u>129.00</u>
Each incline elevator in other than a private residence. ....	\$(( <del>122.70</del> )) <u>138.70</u>
Each belt manlift. ....	\$(( <del>144.10</del> )) <u>129.00</u>
Each stair lift in other than a private residence. ....	\$(( <del>61.10</del> )) <u>69.10</u>

TYPE OF CONVEYANCE	FEE
Each wheel chair lift in other than a private residence . . . . .	\$(( <del>61.10</del> )) <u>69.10</u>
Each personnel hoist . . . . .	\$(( <del>114.10</del> )) <u>129.00</u>
Each grain elevator personnel lift . . . . .	\$(( <del>94.80</del> )) <u>107.20</u>
Each material hoist . . . . .	\$(( <del>114.10</del> )) <u>129.00</u>
Each special purpose elevator . . . . .	\$(( <del>114.10</del> )) <u>129.00</u>
Each private residence elevator installed in other than a private residence . . . . .	\$(( <del>114.10</del> )) <u>129.00</u>
Each casket lift . . . . .	\$(( <del>94.80</del> )) <u>107.20</u>
Each sidewalk freight elevator . . . . .	\$(( <del>94.80</del> )) <u>107.20</u>
Each hand-powered manlift or freight elevator . . . . .	\$(( <del>64.20</del> )) <u>72.60</u>
Each boat launching elevator . . . . .	\$(( <del>94.80</del> )) <u>107.20</u>
Each auto parking elevator . . . . .	\$(( <del>94.80</del> )) <u>107.20</u>
Each moving walk . . . . .	\$(( <del>94.80</del> )) <u>107.20</u>
Duplication of a damaged, lost or stolen operating permit . . . . .	\$(( <del>11.20</del> )) <u>12.60</u>

vehicle and using a hand-held mobile telephone while driving a commercial motor vehicle in the definition of "moving violations."

Reasons Supporting Proposal: The offenses of texting while driving a commercial motor vehicle and using a hand-held mobile telephone while driving a commercial motor vehicle were added to the list of "serious traffic violations" in RCW 46.25.010(18) by the legislature in section 2, chapter 224, Laws of 2013. In order to ensure that notices of failure to appear, respond, or comply in response to notices of infractions issued for these two offenses are reported to the department under RCW 46.20.289, it is necessary to include them in the list of moving violations under WAC 308-104-160.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.2891 46.20.291, and 46.65.020.

Statute Being Implemented: RCW 46.20.2891.

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 because the rule does not regulate or impact business activities.

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).

December 18, 2013  
Damon Monroe  
Rules Coordinator

**WSR 14-01-103**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed December 18, 2013, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-18-066.

Title of Rule and Other Identifying Information: WAC 308-104-160 Moving and nonmoving violations defined.

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 January 22, 2014, at 3:00 p.m.

Date of Intended Adoption: January 23, 2014.

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 January 21, 2014.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by January 21, 2014, TTY (360) 664-0116 or (360) 902-3846.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update WAC 308-104-160 to include texting while driving a commercial motor

AMENDATORY SECTION (Amending WSR 13-04-059, filed 2/1/13, effective 3/4/13)

**WAC 308-104-160 Moving and nonmoving violations defined.** For purposes of RCW 46.20.2891, 46.65.020, and this chapter, the term "moving violation" means any violation of vehicle laws listed in this section that is committed by the driver of a vehicle, while the vehicle is moving. However, being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug is also considered a moving violation for the purposes of this section. Parking violations, equipment violations or paperwork violations relating to insurance, registration, licensing and inspection are considered "nonmoving violations." Moving violations are those violations included in the following list or violations of substantially similar laws, administrative regulations, local laws, ordinances, regulations, or resolutions of a political subdivision of this state, the federal government, or any other state:

- (1) Driving while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502;
- (2) Physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.504;
- (3) Vehicular homicide, as defined by RCW 46.61.520;
- (4) Vehicular assault, as defined by RCW 46.61.522;

- (5) Reckless driving, as defined by RCW 46.61.500;
- (6) Racing, as defined by RCW 46.61.530;
- (7) Embracing, as defined by RCW 46.61.665;
- (8) Hit and run (injury, death, striking the body of a deceased person, or occupied vehicle), as defined by RCW 46.52.020;
- (9) Attempting to elude a police vehicle, as defined by RCW 46.61.024;
- (10) Driving while driving privilege suspended or revoked, as defined by RCW 46.20.342, 46.20.345, or 46.20.394;
- (11) Reckless endangerment of roadway workers, as defined in RCW 46.61.527;
- (12) Driver under twenty-one driving or being in physical control of a motor vehicle after consuming alcohol, as defined in RCW 46.61.503;
- (13) Driving or in physical control of commercial motor vehicle while having alcohol in system, as defined in RCW 46.25.110;
- (14) Open container violation (driver), as defined by RCW 46.61.519;
- (15) Negligent driving in the first degree, as defined by RCW 46.61.5249;
- (16) Negligent driving in the second degree, as defined by RCW 46.61.525 or 46.61.526;
- (17) Hit and run (unattended vehicle or property), as defined by RCW 46.52.010;
- (18) Disobey road sign, as defined by RCW 46.61.050, 46.61.070, or 46.61.450;
- (19) Disobey signalman, officer, or firefighter, as defined by RCW 46.61.015, 46.61.020, 46.61.021, or 46.61.022;
- (20) Disobey school patrol, as defined by RCW 46.61.385;
- (21) Speed too fast for conditions, as defined by RCW 46.61.400;
- (22) Speed in excess of maximum limit, as defined by RCW 46.61.400 or 46.61.460;
- (23) Speeding in a school zone, as defined by RCW 46.61.440;
- (24) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.340, 46.61.345, 46.61.350, 46.61.365, 46.61.370, or 46.61.375;
- (25) Failure to yield right of way, as defined by RCW 46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;
- (26) Failure to keep to the right, as defined by RCW 46.61.100 or 46.61.105;
- (27) Wrong way on a one-way street or rotary traffic island, as defined by RCW 46.61.135;
- (28) Improper lane change or travel, as defined by RCW 46.61.140;
- (29) Straddling or driving over centerline, as defined by RCW 46.61.140;
- (30) Driving on the wrong side of the road, as defined by RCW 46.61.150;
- (31) Crossing divider, as defined by RCW 46.61.150;
- (32) Improper entrance to or exit from freeway, as defined by RCW 46.61.155;
- (33) Violating restrictions on a limited access highway while driving a motor vehicle, as defined by RCW 46.61.160;
- (34) High occupancy vehicle lane violation, as defined by RCW 46.61.165;
- (35) Improper overtaking or passing, as defined by RCW 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, or 46.61.428;
- (36) Passing stopped school bus, as defined by RCW 46.61.370;
- (37) Passing stopped private carrier bus, as defined by RCW 46.61.375;
- (38) Following too closely, as defined by RCW 46.61.145;
- (39) Following fire apparatus, as defined by RCW 46.61.635;
- (40) Crossing fire hose, as defined by RCW 46.61.640;
- (41) Driving on sidewalk, as defined by RCW 46.61.606;
- (42) Driving through safety zone, as defined by RCW 46.61.260;
- (43) Driving with wheels off roadway, as defined by RCW 46.61.670;
- (44) Impeding traffic, as defined by RCW 46.61.100, 46.61.425, or 46.20.427;
- (45) Improper turn, as defined by RCW 46.61.290;
- (46) Prohibited turn, as defined by RCW 46.61.295;
- (47) Failure to signal or improper signal, as defined by RCW 46.61.305, 46.61.310, or 46.61.315;
- (48) Improper backing, as defined by RCW 46.61.605;
- (49) Unlawful operation of motorcycle on roadway, as defined by RCW 46.61.608, 46.61.612, or 46.61.614;
- (50) Reckless endangerment, as defined by RCW 9A.36.050;
- (51) Failure to maintain control, as defined by RCW 46.61.445;
- (52) Violation of license restriction(s), as defined by RCW 46.20.041 or 46.20.740;
- (53) Violation of instruction permit restrictions, as defined by RCW 46.20.055;
- (54) Violation of out-of-service order, as defined by RCW 46.25.090;
- (55) Obstructed vision or control, as defined by RCW 46.61.615;
- (56) Carrying persons or animals outside of vehicle, as defined by RCW 46.61.660;
- (57) Carrying passenger in towed vehicle, as defined by RCW 46.61.625;
- (58) Coasting on downgrade, as defined by RCW 46.61.630;
- (59) Violation of child restraint requirements, as defined by RCW 46.61.687;
- (60) Carrying child under the age of five years old on motorcycle, as defined by RCW 46.37.530;
- (61) Carrying passenger improperly on motorcycle, as defined by RCW 46.61.610;
- (62) No helmet, goggles, mirrors, windshield or face shield, as defined by RCW 46.37.530;
- (63) Operating moped on freeway or sidewalk, as defined by RCW 46.61.710;

- (64) Driving without lights, as defined by RCW 46.37.020;
- (65) Failure to dim lights, as defined by RCW 46.37.230;
- (66) Operating motorcycle without lights, as defined by RCW 46.37.522;
- (67) No lamp, reflector, or flag on extended load, as defined by RCW 46.37.140;
- (68) Wearing earphones or viewing television in vehicle, as defined by RCW 46.37.480;
- (69) Failure to secure load, as defined by RCW 46.37.490;
- (70) Spilling load, as defined by RCW 46.61.655; ~~(and)~~
- (71) Improper towing, as defined by RCW 46.44.070;
- (72) Using a hand-held mobile telephone while driving a commercial motor vehicle, as defined by RCW 46.61.667 (1)(b); and
- (73) Texting while driving a commercial motor vehicle, as defined by RCW 46.61.668 (1)(b).

**WSR 14-01-105  
PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed December 18, 2013, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-16-108.

Title of Rule and Other Identifying Information: The department is amending WAC 388-106-0135 What are the maximum hours that I can receive for in-home services? and adding new WAC 388-106-0136 What if I disagree with the result of the limitation extension decision regarding personal care?

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 January 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 23, 2014.

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 January 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by January 8, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending rules as a result of a settlement agreement reached in *D.B. v. Arnold-Williams*, W.D. Wa. No. 11-cv-2017-RBL. The rules will establish a limitation extension process to request medically necessary additional hours of personal care services for individuals under the age of twenty-one, and pro-

vide a fair hearing process to challenge the denial of such services.

Reasons Supporting Proposal: The proposed rules ensure that the state remains compliant with federal requirements that apply to medical services for individuals under the age of twenty-one.

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 federal court decision, *D.B. v. Arnold-Williams*.

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. No new costs will be imposed on small businesses.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2495, fax (360) 407-7582, e-mail angel.sullivan@dshs.wa.gov.

December 16, 2013

Katherine I. Vasquez

Rules Coordinator

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

**WAC 388-106-0135 What ~~((are))~~ is the maximum number of hours of personal care services that I can receive for in-home services? (1) If you are age 21 or older, ~~((The))~~ the maximum number of hours that you may receive is the base hours assigned to your classification group and adjusted per WAC 388-106-0130, unless additional hours are authorized through an exception to rule per WAC 388-440-0001.** For chore program clients, the maximum personal care hours per month the department will ~~((pay))~~ authorize is one hundred sixteen (116).

**(2) If you are under age twenty-one:**

**(a) The maximum number of hours that you may receive will be the base hours assigned to your classification group and adjusted per WAC 388-106-0130, unless additional hours are authorized under parts (2)(b) or (3) below.**

**(b) Additional hours may be authorized at the department's discretion through an exception to rule per WAC 388-440-0001. You may request additional hours of personal care services through an exception to rule by contacting your case manager and explaining why you do not believe the authorized hours provide adequate assistance with your personal care tasks. The case manager will document your request and forward the request for review per WAC 388-440-0001. You will be notified in writing of the decision.**

**(3) If you are under age twenty-one, the department will authorize additional hours of personal care services beyond those authorized under section (2) according to the limitation extension process described below. If the evidence shows that additional personal care assistance is necessary to cor-**

rect, improve, or prevent further deterioration of your condition, the department will authorize additional hours in the amount required to fully complete your ADLs or IADLs.

(a) You may request a limitation extension in writing within 90 days after you have received the department's written decision under subsection (2)(b); or if 30 days have passed since you requested an exception to rule under subsection (2)(b) and you have not yet received a written decision from DSHS.

(b) You may submit any evidence to show that additional hours of personal care are necessary. The following evidence should be provided:

(i) An explanation of the hours necessary to complete your ADLs and IADLs;

(ii) Documentation of the supports available to you over the course of a week; and,

(iii) An explanation of why informal supports are unavailable to provide the additional assistance you are requesting. When you are living with your legally responsible parent, the considerations described in WAC 388-106-0130 (8)(d) apply to the determination of availability of informal supports.

(c) If requested by the department, you must also provide additional documentation of your situation. If requested documents are not reasonably available to you without cost and/or if you need assistance from the department to obtain the requested documents, you must provide written permission to the department to obtain the documents on your behalf. Documents that the department may ask for include the following:

(i) Your most recent Individualized Educational Plan (IEP), if you are still in school.

(ii) Treatment plans for clinically recommended treatments relevant to your personal care services, such as active range of motion, passive range of motion, bowel program, etc.

(iii) Documents indicating residential time with your noncustodial parent or the availability of a noncustodial parent to provide assistance, such as parenting plans or child support orders. If those documents do not accurately reflect the supports currently available to you, you may also submit information or documents describing the support actually provided by your non-custodial parent.

(d) The department may also require a further review of your functional ability to perform specific ADLs and IADLs, to be conducted at the department's expense. The review must be completed under WAC 182-551-2110 by a qualified occupational therapist. If a qualified occupational therapist is not available to complete the review, the department will designate another qualified healthcare professional to complete the review.

(e) Upon receiving your request for a limitation extension and any additional supporting information you choose to submit under subsection (3)(b), the department will make a decision according to the timeline below.

(i) The department will make a decision under subsection (3) within 30 days unless additional information is required under subsections (3)(c) and/or (3)(d).

(ii) If additional information is required under subsections (3)(c) and/or (3)(d), the department will notify you of

what additional information is required within 30 days of the date the department received your request and supporting information, if any. The department will then make a determination under subsection (3) within 15 days of either of the following, whichever comes first:

(A) The date that the department receives all of the requested information, including a report of any review of your functional ability conducted under subsection (3)(d); or

(B) The date that you notify the department that you will not be providing any additional information.

(f) Additional hours will not be approved to substitute for the duties of legally responsible adults, replace childcare or school, replace recommended equipment available through Medicaid, or provide supervision other than task-specific supervision necessary for you to perform an ADL or IADL.

## NEW SECTION

**WAC 388-106-0136 What if I disagree with the result of the Limitation Extension decision regarding personal care?** (1) In addition to your right to contest the result of your CARE assessment under WAC 388-106-1305, if you are under the age of twenty-one you have the right to an administrative hearing to contest the number of personal care hours authorized pursuant to WAC 388-106-0135(3).

(2) The department will notify you in writing of your right to an administrative hearing under sub-section (1) and will provide you with information about how to request a hearing.

## **WSR 14-01-106**

### **PROPOSED RULES**

### **DEPARTMENT OF**

### **SOCIAL AND HEALTH SERVICES**

(Behavioral Health and Service Integration Administration)

[Filed December 18, 2013, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-16-103.

Title of Rule and Other Identifying Information: New section WAC 388-877A-0370 Recovery support services requiring program-specific certification—Applied behavior analysis (ABA) services; and repealing WAC 388-865-0400 Community support service providers, 388-865-0405 Competency requirements for staff, 388-865-0420 Intake evaluation, 388-865-0425 Individual service plan, 388-865-0460 Counseling and psychotherapy services—Additional standards, and 388-865-0469 Applied behavior analysis (ABA) services.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on January 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 23, 2014.

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 January 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by January 8, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is repealing WAC 388-865-0469 Applied behavior analysis (ABA) services filed on May 29, 2013, under WSR 13-12-026, and replacing it with WAC 388-877A-0370 Recovery support services requiring program-specific certification—Applied behavior analysis (ABA) services. This rule contains the licensure, certification, and staffing requirements for agencies providing ABA services to assist children with autism spectrum disorders. WAC 388-865-0400, 388-865-0405, 388-865-0420, 388-865-0425, and 388-865-0460 are also being repealed because the requirements in these sections are now included in chapters 388-877 and 388-877A WAC. The new rule ensures the continued implementation of the requirements of a settlement agreement resulting from *Washington Autism Alliance and Advocacy, et al. v. Douglas Porter*, U.S. District Court, Western District of Washington, Case No. 2:12-cv-0072-RAJ [2:12-CV-00742-RAJ]. The rule also ensures the continued provision of minimum standards for agencies to obtain and maintain licensure from the department of social and health services (DSHS) so that licensed agencies may contract with the health care authority (HCA) to deliver ABA services to eligible individuals. HCA has adopted rules in Title 182 WAC to implement this settlement agreement.

Statutory Authority for Adoption: RCW 43.20A.550, 74.04.050, 74.08.090, chapters 70.02, 71.24 RCW.

Statute Being Implemented: RCW 43.20A.550, 74.04.-050, 74.08.090, chapters 70.02, 71.24 RCW.

Rule is necessary because of state court decision, *Washington Autism Alliance and Advocacy, et al. v. Douglas Porter*, U.S. District Court, Western District of Washington, Case No. 2:12-cv-00742-RAJ.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Pete Marburger, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1513.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC 388-865-0469 was adopted to implement, in part, a settlement agreement (*Washington Autism Alliance and Advocacy, et al. v. Douglas Porter*, U.S. District Court, Western District of Washington, Case No. 2:12-cv-00742-RAJ); the department is repealing this section (filed as a permanent rule on May 29, 2013, under WSR 13-12-026) and replacing it with WAC 388-877A-0370. In addition, the requirements in the remaining repealed sections in chapter 388-865 WAC are found in chapters 388-877 and 388-877A WAC. This rule filing continues to implement the settlement agreement. Pursuant to RCW 19.85.025

(3) and 34.05.328 (5)(b)(v), a small business economic impact statement is not required.

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. The rules are necessary due to a settlement agreement. The department is repealing WAC 388-865-0469 and other sections in chapter 388-865 WAC (filed as a permanent rule on May 29, 2013, under WSR 13-12-026) because the language adopted due to the settlement agreement will be codified in the new WAC 388-877A-0370 as well as in chapters 388-877 and 388-877A WAC.

December 12, 2014  
Katherine I. Vasquez  
Rules Coordinator

### NEW SECTION

**WAC 388-877A-0370 Recovery support services requiring program-specific certification—Applied behavioral analysis (ABA) services** Applied behavior analysis (ABA) services are a recovery support service that requires program-specific certification by the department's division of behavioral health and recovery.

(1) ABA services:

(a) Assist children and their families to improve the core symptoms associated with autism spectrum disorders or other developmental disabilities for which there is evidence ABA is effective; and

(b) Support learning, skill development, and assistance in any one or more of the following areas or domains:

- (i) Social;
- (ii) Behavior;
- (iii) Adaptive;
- (iv) Motor;
- (v) Vocational; and
- (vi) Cognitive.

(2) An agency providing ABA services must meet the:

(a) General requirements in chapter 388-877 WAC for behavioral health services administrative requirements;

(b) General requirements in WAC 388-877A-0300 for recovery support services requiring program-specific certification;

(c) Specific agency staff requirements in WAC 388-877A-0310; and

(d) Specific clinical record content and documentation requirements in WAC 388-877-640 and 388-877A-0320.

(3) The health care authority (HCA) administers rules in chapter 182-531 WAC for ABA services requirements. The rules in chapter 182-531 WAC include:

- (a) Definitions that apply to ABA services;
- (b) Program and clinical eligibility requirements;
- (c) Prior authorization and recertification requirements;
- (d) Specific ABA provider requirements;
- (e) Covered and noncovered services;
- (f) Billing requirements; and
- (g) Requirements for:

(i) Referrals to Centers of Excellence (COE) for evaluations and orders to be performed by healthcare professionals

licensed under chapters 18.71, 18.71A, 18.79, and 18.83 RCW; and

(ii) ABA assessments and individualized ABA therapy treatment plans.

(4) The ABA therapy treatment plan must:

(a) Be developed and maintained by a lead behavior analysis therapist (LBAT) (see (5) of this section);

(b) Identify the services to be delivered by the LBAT and the therapy assistant, if the agency employs a therapy assistant (see (6) and (7) of this section);

(c) Be comprehensive and incorporate treatment being provided by other health care professionals; and

(d) Document how all treatment will be coordinated, as applicable, with other members of the health care team.

(5) An agency must employ a lead behavior analysis therapist (LBAT).

(a) To qualify as an LBAT, an individual must meet the professional requirements in chapter 182-531 WAC.

(b) The agency must ensure the LBAT meets other applicable requirements in chapter 182-531 WAC.

(6) An agency may choose to employ a therapy assistant.

(a) To qualify as a therapy assistant, an individual must meet the professional requirements in chapter 182-531 WAC.

(b) The agency must ensure the therapy assistant meets other applicable requirements in chapter 182-531 WAC.

(7) If the agency employs a therapy assistant(s), the agency must ensure the LBAT:

(a) Supervises the therapy assistant in accordance with agency policies and procedures;

(b) Meets the requirements in this section;

(c) Completes a review of an individual's ABA therapy treatment plan with the therapy assistant before services are provided;

(d) Assures the therapy assistant delivers services according to the individual's ABA therapy treatment plan; and

(e) Meets at least every two weeks with the therapy assistant and documents review of the individual's progress and/or response to the treatment, and makes changes accordingly to the ABA therapy treatment plan.

(8) To maintain department program-specific certification to provide ABA services, an agency must continue to ensure the requirements in this section are met.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-865-0400	Community support service providers.
WAC 388-865-0405	Competency requirements for staff.
WAC 388-865-0420	Intake evaluation.
WAC 388-865-0425	Individual service plan.
WAC 388-865-0460	Behavioral, counseling and psychotherapy services—Additional standards.

WAC 388-865-0469 Applied behavior analysis (ABA) services.

#### **WSR 14-01-107**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

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

(Behavioral Health and Service Integration Administration)

[Filed December 18, 2013, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-16-103.

Title of Rule and Other Identifying Information: New section WAC 388-877A-0138 Outpatient mental health services—Individual treatment services; and amending WAC 388-877A-0138 [388-877A-0100] Outpatient mental health services—General, 388-877A-0100 [388-877A-0110] Outpatient mental health services—Agency staff requirements, 388-877B-0320 Chemical dependency outpatient treatment services—Clinical record content and documentation, 388-877B-0420 Chemical dependency opiate substitution treatment services—Clinical record content and documentation requirements, and 388-877B-0500 Chemical dependency assessment services—General.

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 January 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 23, 2014.

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 January 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by January 8, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new section provides program-specific rules for individual treatment services for agencies that provide outpatient mental health services. The amended rules: (1) Update WAC 388-877A-0100 by adding individual treatment services to the outpatient mental health service list and applied behavioral analysis (ABA) services to the recovery support services list. (2) Ensure consistency with other sections in chapters 388-877A and 388-877B WAC pertaining to program-specific agency staff requirements, documentation requirements regarding giving an individual a copy of the rules and responsibilities for treatment participants, and requirements when an individual is transferred to another service provider. (3) Eliminate the reference in WAC 388-877A-0500 to the Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) which will end when the federal Patient Protection and Affordable Care Act (ACA) rules become effective



January 1, 2014. (4) Update and clarify department rules for licensed behavioral health agencies and help provide standardization of documentation requirements to program-specific behavioral health services programs. (5) Assure requirements are consistent for all behavioral health agencies and program-specific services.

Reasons Supporting Proposal: The health care authority (HCA) and the department of social and health services (the department) are concurrently adopting rules to meet the requirements of the settlement agreement which requires HCA to provide a coverage benefit to assist children with autism spectrum disorders and DSHS to establish minimum licensing standards in rule in order for community mental health agencies to deliver ABA services.

Statutory Authority for Adoption: RCW 43.20A.550, 74.04.050, 74.08.090; chapters 70.02, 71.24 RCW.

Statute Being Implemented: RCW 43.20A.550, 74.04.-050, 74.08.090; chapters 70.02, 71.24 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Pete Marburger, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1513.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**SUMMARY OF PROPOSED RULE:** The department, division of behavioral health and recovery (DBHR) is proposing a new section in chapter 388-877A WAC, and proposing to amend sections in chapters 388-877A and 388-877B WAC:

Summary of proposed rule:

- Establishes a new section that describes individual treatment services and the staff qualifications required of individuals who provide these outpatient mental health services.
- Amends WAC 388-877A-0100 by adding individual treatment services to the list of outpatient mental health services and ABA services to the list of recovery support services.
- Adds language regarding behavioral health agency staff requirements, documentation requirements regarding giving an individual a copy of the rules and responsibilities for treatment participants, and requirements when an individual is transferred to another service provider.
- Removes a reference to ADATSA from WAC 388-877A-0500.

**INVOLVEMENT OF STAKEHOLDERS AND SMALL BUSINESSES:** The department's DBHR recently adopted new chapters 388-877, 388-877A, 388-877B, and 388-877C WAC and subsequently provided stakeholder and provider trainings throughout the state in eight community locations. During some of these training sessions, stakeholders requested that the department add language back into chapter 388-877A

WAC regarding individual therapy services (outpatient mental health services). Providers providing individual therapy services informed DBHR that language in rule is needed in order to bill for the services as well as assure reimbursement for providing these services. Individual therapy services were previously defined in rule and the department did not adopt the language into the new rule. The department agreed and is proposing new section WAC 388-877A-0138.

The department filed a CR-101 (preproposal statement of inquiry) under WSR 13-16-103 on August 7, 2013. Copies of the CR-101 were sent to tribal leaders and all stakeholders and providers listed in DBHR's listserv data base.

In November 2013, the department sent a draft of the rule to all interested parties who contacted the department with an interest to participate in reviewing the proposed rule. The department provides a response to each comment received.

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS) – DETERMINATION OF NEED:** Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses and it outlines the information that must be included in an SBEIS. Preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

Preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute outlines information that must be included in an SBEIS.

This rule applies to behavioral health agencies that provide chemical dependency treatment services and/or outpatient mental health treatment services. These businesses fall under the North American Industry Classification System (NAICS) codes:

- 622210 - Psychiatric and substance abuse hospitals
- 623220 - Residential substance abuse facilities
- 621420 - Outpatient substance abuse and mental health centers
- 623220 - Residential mental health facilities

The department previously determined that there were one hundred twenty-six existing for-profit chemical dependency treatment agencies that meet the criteria for small businesses under RCW 19.85.020. Subsequently, the department decided to consider economic impacts on all for-profit and publicly-funded department-certified chemical dependency treatment agencies. Therefore, the industry analysis includes five hundred eighty certified chemical dependency treatment agencies. The department further determined there are about one hundred eighty business entities that provide mental health treatment services at four hundred twenty specific locations. Of the estimated one thousand services sites providing chemical dependency and mental health treatment services, about one hundred sixty business organizations maintain both a certificate for chemical dependency treatment services and a license for mental health treatment services.

**EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS:** Since WAC 388-877A-0138 is a new section it is considered to "make significant amendments to a policy or regulatory program." Under RCW 34.05.328 (5)(c)(iii), the department has determined the rule to be "significant" as defined by the Washington state legislature.

As required by RCW 34.05.328 (1)(d), the department has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative costs and benefits. The department's analysis shows the costs and benefits of the proposed rule to those impacted by the rule. Impacted groups include behavioral health agencies owned by nonprofit businesses, for-profit businesses, public nonprofit providers, and tribal programs that provide DBHR-certified chemical dependency services and/or certified outpatient mental health services.

**Costs:** Under chapter 19.85 RCW, DBHR has considered annual costs to small businesses that are fifty dollars or more per client. The department's analysis revealed that there are no costs or minimal costs for the proposed rule that will affect treatment services provided at approximately one thousand sites that meet the definition of a small business.

**Mitigating Costs:** Costs are determined to be minor under chapter 19.85 RCW. For the rules of the department, "minor cost" means cost per business that is less than fifty dollars of annual cost per client or other appropriate unit of service.

The department has staff available to answer any questions an agency may have in order to implement this rule.

**Benefits:** The benefits to the implementation of this rule include individual care, programmatic, administrative, and improved cross-systems collaboration.

(1) The new rule provides an agency that provides outpatient mental health services with program-specific rules for individual treatment services.

(2) The rule updates WAC 388-877A-0100 by adding individual treatment services to the outpatient mental health service list in subsection (2) and ABA services to the recovery support services list in subsection (4).

(3) The amended rule ensures consistency with other sections in chapters 388-877A and 388-877B WAC pertaining to program-specific agency staff requirements, documentation requirements regarding giving an individual a copy of the rules and responsibilities for treatment participants, and requirements when an individual is transferred to another service provider.

(4) The rule eliminates the reference in WAC 388-877A-0500 to ADATSA which will end when the federal ACA rules become effective January 1, 2015. Individuals eligible for ADATSA will be newly eligible under the ACA rules.

(5) The rule updates and clarifies department rules for licensed behavioral health agencies and helps provide standardization of documentation requirements to program-specific behavioral health services programs.

Agencies that elect to become a behavioral health agency under proposed chapter 388-877 WAC must also meet the program-specific certification requirements in chapters 388-877A and 388-877B WAC for the program-specific services they provide. The rule benefits agencies by updating and clar-

ifying requirements and assuring requirements are consistent for all agencies and program-specific services.

**CONCLUSION:** The department has given careful consideration to the impact of the proposed rule on small businesses. To comply with the Regulatory Fairness Act (chapter 19.85 RCW), the department has analyzed impacts on small businesses. The department has determined the costs to be minor and has determined the probable benefits outweigh the probable costs.

Please contact Kathy Sayre if you have any questions (360) 725-1342, toll free 1-877-301-4557, or by e-mail [kathy.sayre@dshs.wa.gov](mailto:kathy.sayre@dshs.wa.gov).

A copy of the statement may be obtained by contacting Kathy Sayre, Rules Manager, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-1342, fax (360) 725-2280, e-mail [kathy.sayre@dshs.wa.gov](mailto:kathy.sayre@dshs.wa.gov).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-1342, fax (360) 725-2280, e-mail [kathy.sayre@dshs.wa.gov](mailto:kathy.sayre@dshs.wa.gov).

December 11, 2013  
Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877A-0100 Outpatient mental health services—General.** The rules in this section apply to behavioral health agencies that provide outpatient mental health services. The definitions in WAC 388-877-0200 also apply to outpatient mental health services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Outpatient mental health services are intended to improve and/or reduce symptoms, and resolve situational disturbances for individuals in the areas of relational, occupational and/or vocational concerns.

(2) Outpatient mental health services include:

(a) Individual treatment services (see WAC 388-877A-0138);

(b) Brief intervention treatment services (see WAC 388-877A-0140);

~~((b))~~ (c) Group therapy services (see WAC 388-877A-0150);

~~((c))~~ (d) Family therapy services (see WAC 388-877A-0155);

~~((d))~~ (e) Case management services (see WAC 388-877A-0170);

~~((e))~~ (f) The optional mental health services described in (3) of this subsection; and

~~((f))~~ (g) The recovery support services described in (4) of this subsection.

(3) A behavioral health agency certified for outpatient mental health services may choose to provide optional outpatient mental health services. Optional outpatient mental

health services require additional program-specific certification by the department's division of behavioral health and recovery and include the following:

(a) Psychiatric medication services (see WAC 388-877A-0180);

(b) Day support services (see WAC 388-877A-0190);

(c) Less restrictive alternative (LRA) support services (see WAC 388-877A-0195); and

(d) Services provided in a residential treatment facility (see WAC 388-877A-0197).

(4) A behavioral health agency certified for outpatient mental health services may also provide recovery support services. Recovery support services require program-specific certification and include the following:

(a) Employment services (see WAC 388-877A-0330);

(b) Peer support services (see WAC 388-877A-0340);

(c) Wraparound facilitation services (see WAC 388-877A-0350); ~~(and)~~

(d) Medication support services (see WAC 388-877A-0360); and

(e) Applied behavior analysis (ABA) services (see WAC 388-877A-00370).

(5) An agency providing outpatient mental health services to individuals must:

(a) Be licensed by the department as a behavioral health agency.

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC.

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC;

(ii) Applicable program-specific requirements for each outpatient mental health service provided, and each optional and recovery support service requiring program-specific certification that the agency elects to provide; and

(iii) Department of Corrections Access to Confidential Mental Health Information requirements in WAC 388-865-0600 through 388-865-0640.

(6) At the verbal or written request of the individual, the agency must, if applicable:

(a) Include the individual's family members, significant others, and other relevant treatment providers in the services provided by the agency; and

(b) Document the request in the individual's clinical record.

(7) If an individual has a crisis plan, the crisis plan must be:

(a) Placed in the individual's clinical record; and

(b) Made available to the following, subject to state and federal confidentiality rules and laws:

(i) Designated mental health professionals;

(ii) Crisis team members; and

(iii) Voluntary and involuntary inpatient evaluation and treatment facilities.

(8) An agency that provides services at an established off-site location(s) must:

(a) Maintain a list of each established off-site location where services are provided.

(b) Include, for each established off-site location:

(i) The name and address of the location the services are provided;

(ii) The primary purpose of the off-site location;

(iii) The service(s) provided; and

(iv) The date off-site services began at that location.

(9) An agency providing in-home services or services in a public setting must:

(a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual and staff member safety; and

(b) For the purpose of emergency communication, and as required by RCW 71.05.710, provide a wireless telephone, or comparable device, to any mental health professional who makes home visits to individuals.

(10) An agency must:

(a) Maintain an individual's confidentiality at the off-site location;

(b) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable;

(c) Be certified to provide the type of mental health service offered at each off-site location; and

(d) Ensure the mental health services provided at off-site locations meet the requirements of all applicable local, state, and federal rules and laws.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877A-0110 Outpatient mental health services—Agency staff requirements.** In addition to meeting the agency administration and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing outpatient mental health services must ensure:

(1) ~~((AH))~~ Each outpatient mental health ~~((services are))~~ service is provided by ~~((, or under the supervision of, a mental health professional;))~~ qualified staff members who meet the following for their scope of practice and services provided:

(a) Professional standards, including documented coursework, continuing education and/or training;

(b) Clinical supervision requirements; and

(c) Licensure and/or credentialing requirements.

(2) Each staff member working directly with an individual receiving mental health services receives:

(a) Clinical supervision from a mental health professional who has received fifteen hours of training in clinical supervision approved by department of health; and

(b) Annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030.

(3) Staff access to consultation with a psychiatrist or a physician who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder.

#### NEW SECTION

**WAC 388-877A-0138 Outpatient mental health services—Individual treatment services.** Individual treatment services are services designed to assist an individual in attaining the goals identified in the individual service plan. The treatment services are conducted with the individual and any

natural supports as identified by the individual. An agency providing individual treatment services must ensure treatment is provided by a:

- (1) Mental health professional who has documented coursework, continuing education, and/or training that specifically address individual therapy theories and techniques;
- (2) Clinician who is licensed by department of health to practice independently; or
- (3) Licensure candidate under the supervision of an approved supervisor, as defined in chapter 246-809 WAC, for their respective license.

**AMENDATORY SECTION** (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0320 Chemical dependency outpatient treatment services—Clinical record content and documentation.** In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing chemical dependency outpatient treatment services must maintain an individual's clinical record.

- (1) The clinical record must contain:
  - (a) Documentation the individual was informed of federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.
  - (b) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanctions.
  - (c) Documentation that the initial individual service plan was completed before treatment services are received.
  - ~~((e))~~ (d) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

~~((e))~~ (e) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

- (i) The individual's demographic information; and
- (ii) The diagnostic assessment statement and other assessment information to include:
  - (A) Documentation of the HIV/AIDS intervention.
  - (B) Tuberculosis (TB) screen or test result.
  - (C) A record of the individual's detoxification and treatment history.
  - (D) The reason for the individual's transfer.
  - (E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.
  - (F) A discharge summary and continuing care plan.
  - (f) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

~~((e))~~ (g) Documentation that staff members met with each individual at the time of discharge, unless the individual left without notice, to:

- (i) Determine the appropriate recommendation for care and finalize a continuing care plan.
- (ii) Assist the individual in making contact with necessary agencies or services.
- (iii) Provide and document the individual was provided with a copy of the plan.
- ~~((f))~~ (h) Documentation that a discharge summary was completed within seven days of the individual's discharge, including the date of discharge, a summary of the individual's progress towards each individual service plan goal, legal status, and if applicable, current prescribed medication.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

- (a) Be personalized to the individual's unique treatment needs;
- (b) Include individual needs identified in the diagnostic and periodic reviews, addressing:
  - (i) All substance use needing treatment, including tobacco, if necessary;
  - (ii) The individual's bio-psychosocial problems;
  - (iii) Treatment goals;
  - (iv) Estimated dates or conditions for completion of each treatment goal; and
  - (v) Approaches to resolve the problem.
- (c) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.
- (d) Document that the plan was updated to reflect any changes in the individual's treatment needs, or as requested by the individual, at least once per month for the first three months, and at least quarterly thereafter.
- (e) Document that the plan has been reviewed with the individual.

**AMENDATORY SECTION** (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0420 Chemical dependency opiate substitution treatment services—Clinical record content and documentation requirements.** In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing chemical dependency opiate substitution treatment services must maintain an individual's clinical record.

- (1) The clinical record must contain:
  - (a) Documentation the individual was informed of the federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.
  - (b) Documentation that the agency made a good faith effort to review if the individual is enrolled in any other opiate substitution treatment and take appropriate action.
  - (c) Documentation that the agency:
    - (i) Referred the individual to self-help group(s).
    - (ii) Addressed the individual's vocational, educational, and employment needs; and
    - (iii) Encouraged family participation.
  - (d) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction.

(e) Documentation that the individual service plan was completed before the individual received treatment services.

(f) Documentation that the individual service plan was reviewed:

(i) Once every month, for the first ninety days in treatment;

(ii) Once every three months, for every two years of continued enrollment in treatment; and

(iii) Once every six months, after the second year of continued enrollment in treatment.

(g) Documentation that individual or group counseling sessions were provided:

(i) Once every week, for the first ninety days:

(A) For a new individual in treatment;

(B) For an individual readmitted more than ninety days since the most recent discharge from opiate substitution treatment.

(ii) Once every week, for the first month, for an individual readmitted within ninety days since the most recent discharge from opiate substitution treatment; and

(iii) Once every month, for an individual transferring from another opiate substitution treatment program, when the individual had received treatment for at least ninety days.

(h) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(i) Documentation when an individual refuses to provide a drug testing specimen sample or refuses to initial the log containing the sample number. The refusal is considered a positive drug screen specimen.

(j) Documentation of the results and the discussion held with the individual regarding any positive drug screen specimens in the counseling session immediately following the notification of positive results.

(k) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(l) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and

(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.

(B) Tuberculosis (TB) screen or test result.

(C) A record of the individual's detoxification and treatment history.

(D) The reason for the individual's transfer.

(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(m) Documentation that a staff member(s) met with the individual at the time of discharge from the agency, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan.

(ii) Assist the individual in making contact with necessary agencies or services.

(iii) Provide and document the individual was provided a copy of the plan.

~~((n))~~ (n) Documentation that the discharge summary was completed within seven working days of the individual's discharge from the agency, which includes the date of discharge and a summary of the individual's progress towards each individual service plan goal.

~~((o))~~ (o) Documentation of all medical services. See WAC 388-877B-0440 and 388-877B-0450, regarding program physician responsibility and medication management.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

(a) Be personalized to the individual's unique treatment needs;

(b) Include individual needs identified in the diagnostic and periodic reviews, addressing:

(i) All substance use needing treatment, including tobacco, if necessary;

(ii) The individual's bio-psychosocial problems;

(iii) The treatment goals;

(iv) Estimated dates or conditions for completion of each treatment goal; and

(v) Approaches to resolve the problem.

(c) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.

(d) Document that the plan has been reviewed with the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0500 Chemical dependency assessment services—General.** The rules in WAC 388-877B-0500 through 388-877B-0550 apply to behavioral health agencies that provide chemical dependency assessment services. The definitions in WAC 388-877-0200 also apply to chemical dependency assessment services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Chemical dependency assessment services are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(2) Chemical dependency assessment services include:

(a) Assessment only services; and

(b) Driving under the influence (DUI) assessment services.

(3) A behavioral health agency certified for assessment only services may choose to provide optional program-specific DUI assessment services (see WAC 388-877B-0550). Optional DUI assessment services require additional pro-

gram-specific certification by the department's division of behavioral health and recovery.

(4) An agency providing assessment services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Program-specific requirements in WAC 388-877B-0500 through 388-877B-0550.

(5) An agency providing assessment services:

(a) Must review, evaluate, and document information provided by the individual;

(b) May include information from external sources such as family, support individuals, legal entities, courts, and employers; and

(c) Is not required to meet the individual service plan requirements in WAC 388-877-0620.

(6) An agency must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(7) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and

(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.

(B) Tuberculosis (TB) screen or test result.

(C) A record of the individual's detoxification and treatment history.

(D) The reason for the individual's transfer.

(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(8) An agency providing (~~Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) and~~) driving under the influence (DUI) assessment services must meet the additional program-specific standards in WAC 388-877B-0550.

Preproposal statement of inquiry was filed as WSR 13-18-022.

Title of Rule and Other Identifying Information: WAC 388-823-1010, 388-832-0085, 388-827-0115, 388-827-0145, and 388-828-9140.

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 January 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 23, 2014.

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 January 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by January 8, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose for these changes is to allow the developmental disabilities administration (DDA) to continue enrollment of individuals onto the individual and family services (IFS) program, who have been waiting for needed services and supports. These changes will enable families to continue caring for their family members in their own homes and help stabilize families and individuals who are experiencing increased caregiving stress and crisis by providing respite from their caregiving duties.

DDA used historical data about award amounts and utilization to determine new award amounts for each service priority level so that DDA can help more individuals and families with the funds allocated in the budget.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040, 74.08.090.

Statute Being Implemented: RCW 71A.12.120 and Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Mark Eliason, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3452; Implementation and Enforcement: Bob Beckman, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3415.

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).

December 16, 2013  
Katherine I. Vasquez  
Rules Coordinator

**WSR 14-01-108**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed December 18, 2013, 10:36 a.m.]

Original Notice.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

**WAC 388-823-1010 When will DDD review my eligibility to determine if I continue to have a developmental disability?** (1) Your eligibility can be reviewed at any time if your eligibility effective date is prior to July 2005 and you are age ten or older and were eligible under a condition of developmental delay or Down syndrome.

(2) Your eligibility will be reviewed at age seventeen with termination occurring no sooner than your eighteenth birthday if your most current eligibility determination was at sixteen or younger under mental retardation, cerebral palsy, epilepsy, autism, another neurological condition, or other condition similar to mental retardation.

(3) DDD will review your eligibility prior to the initial authorization of any paid service from DDD when you are not currently receiving paid services and:

(a) You are age eighteen or older and your most current eligibility determination (~~(is more than twenty-four months old)~~) was made prior to June 1, 2005; or

(b) You are age four but under age eighteen and your eligibility was established under the eligible conditions of developmental delay or Down syndrome and your eligibility effective date is prior to July 2005.

(4) DDD will review your eligibility if DDD discovers:

(a) The evidence used to make your most recent eligibility determination completed in 1992 or later appears to be insufficient, in error, or fraudulent; or

(b) New diagnostic information becomes available that does not support your current eligibility and you are under the age of eighteen.

AMENDATORY SECTION (Amending WSR 11-17-068, filed 8/16/11, effective 9/16/11)

**WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP?** Following are the programmatic eligibility requirements to receive DDD/SSP:

(1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,
- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,
- (vi) Agency in-home specialized support,
- (vii) Group care basic maintenance,
- (viii) Group care specialized support,
- (ix) Transportation,
- (x) Agency attendant care,
- (xi) Child care,

- (xii) Professional services,
- (xiii) Nursing services,
- (xiv) Interpreter services,
- (b) Family support;
- (c) One or more of the following residential services:
  - (i) Adult family home,
  - (ii) Adult residential care facility,
  - (iii) Alternative living,
  - (iv) Group home,
  - (v) Supported living,
  - (vi) Agency attendant care,
  - (vii) Supported living or other residential service allowance,
  - (viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

- (a) Adult residential care facility;
- (b) Alternative living;
- (c) Group home;
- (d) Supported living;

- (e) Agency attendant care;
- (f) Supported living or other residential allowance.

(8) You received one or more of the following residential services between July 1, 2003 and June 30, 2013 and demonstrate an ongoing need for a residential allowance request on a periodic, or routine basis of at least once a quarter. You must also receive SSI or would receive SSI if it were not for the receipt of DAC as well as continue to meet the program eligibility requirements for these services:

- (a) Alternative living;
- (b) Supported living; or
- (c) Companion homes.

(9) ~~((As of December 31, 2010, you met))~~ You meet the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS) ~~((; you had an IFS service level of three or four, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to January 1, 2011, or you received))~~ and you are currently receiving SSI payments or you would receive SSI payments if you did not receive Social Security Title II benefits as a disabled adult child ~~((prior to January 1, 2011 and would have been eligible for SSI if you did not receive these benefits)).~~

(10) As of March 31, 2011, you met the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS), you had an IFS service level of one or two, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to April 1, 2011, or you received social security title II benefits as a disabled adult child prior to April 1, 2011 and would have been eligible for SSI if you did not receive these benefits.

AMENDATORY SECTION (Amending WSR 06-24-074, filed 12/4/06, effective 1/4/07)

**WAC 388-827-0145 How much money will I receive?**

The purpose of the SSP is to increase the amount of income to meet your needs. The department will determine your payment amount based on your living arrangement and your assessed needs.

(1) For residential and voluntary placement program services, the amount of your SSP will be based on the amount of state-only dollars spent on certain services at the time the funding source was converted to SSP. If the type of your residential living arrangement changes, your need will be reassessed and your payment adjusted based on your new living arrangement and assessed need.

(2) ~~((For family support services, refer to WAC 388-825-200 through 388-825-256.))~~ If you receive SSP in lieu of individual and family services you will receive the following amounts based on your DDA assessment:

<u>If your individual and family services score is:</u>	<u>The award level will be</u>	<u>The amount of your award will be</u>
<u>0 - 60</u>	<u>Not eligible</u>	<u>Not eligible</u>
<u>61-240</u>	<u>Level 1</u>	<u>\$1,200</u>
<u>241-336</u>	<u>Level 2</u>	<u>\$1,800</u>

<u>If your individual and family services score is:</u>	<u>The award level will be</u>	<u>The amount of your award will be</u>
<u>337-527</u>	<u>Level 3</u>	<u>\$2,400</u>
<u>528 or more</u>	<u>Level 4</u>	<u>\$3,600</u>

(a) If you are on the home and community based services (HCBS) waiver administered by DDD:

(i) You will receive nine hundred dollars DDD/SSP money per year to use as you determine.

(ii) The remainder up to the maximum yearly award for traditional family support or family support opportunities may be authorized by DDD to purchase HCBS waiver services and will be paid directly to the provider.

(b) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the traditional family support program between March 1, 2001 and June 30, 2003 the amount of your SSP will be based on the yearly maximum allowed at the time the funding source was converted to SSP unless your need changes.

(i) Need is based on your service need level and whether you receive medicaid personal care as specified in WAC 388-825-254.

(ii) If your need changes, the amount of your SSP will be adjusted accordingly.

(c) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the family support opportunity program between March 1, 2001 and June 30, 2003 the amount of your SSP will be fifteen hundred dollars per year.

(d) The yearly amount of DDD/SSP money will be prorated into monthly amounts. You will receive one twelfth of the yearly amount each month.

(3) If you are eligible for SSP because you meet the criteria in WAC 388-827-0115(5), you will receive one hundred dollars per month.

(4) DDD may authorize additional payments to certain individuals if the SSP budget has sufficient funds to allow this payment.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

**WAC 388-828-9140 How does DDD determine the amount of your individual and family service award?**

DDD uses the following table to determine the amount of your individual and family services award:

<u>If your individual and family services score is:</u>	<u>The award level will be</u>	<del>((Then))</del> <u>The amount of your award is up to:</u>
<u>0 to 60</u>	<u>Not eligible</u>	<u>No Award</u>
<u>61 to 240</u>	<u>Level 1</u>	<del>\$(2000))</del> <u>1,200</u>
<u>241 to 336</u>	<u>Level 2</u>	<del>\$(3000))</del> <u>1,800</u>
<u>337 to 527</u>	<u>Level 3</u>	<del>\$(4000))</del> <u>2,400</u>
<u>528 or more</u>	<u>Level 4</u>	<del>\$(6000))</del> <u>3,600</u>



AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

**WAC 388-832-0085** When there is state funding available to enroll additional clients ~~((in))~~ **on** the IFS program, how will DDD select from the clients on the IFS program request list? When there is state funding available for additional IFS participants, DDD ~~((may))~~ will enroll participants based on ~~((the following considerations:~~

~~(1) Clients who have requested residential habilitation center (RHC) respite, emergency services, or residential placement, prior to June 30, 2007.~~

~~(2) Clients with the highest scores in caregiver and behavior status on the mini assessment.~~

~~(3) Clients who have been on the IFS program request list the longest))~~ priorities established by the legislature or from the date the client was placed on the IFS request list.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

**WAC 388-832-0130** What is the amount of the IFS program allocation my family is going to receive? The DDD assessment, described in chapter 388-828 WAC, will determine your level of need. The IFS program annual allocations are ~~((as follows:~~

~~(1) Level 1 – Up to \$2,000;~~

~~(2) Level 2 – Up to \$3,000;~~

~~(3) Level 3 – Up to \$4,000; and~~

~~(4) Level 4 – Up to \$6,000))~~ identified in 388-828-9140.

## WSR 14-01-109

### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 18, 2013, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-09-065.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-410-0025 Am I responsible for an overpayment in my assistance unit? and 388-410-0033 How and when does the department collect a Basic Food or WASHCAP overpayment?

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 January 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 23, 2014.

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 January 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by January 8, 2014,

TTY (360) 664-6178 or (360) 664-6094 or by e-mail [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend rules under WAC 388-410-0025 and 388-410-0033 to make changes that clarify rules about options concerning waiving, compromising, writing off, or terminating Basic Food and WASHCAP overpayment claims and clarify that federal law does not allow for supplemental nutrition assistance program (SNAP) overpayment claims to be dismissed on the basis of equitable estoppel.

Reasons Supporting Proposal: Equitable estoppel is a legal concept adopted by a number of states that provides that individuals should not be held responsible for errors that were not their fault. The preamble of the final rule on claims establishment for SNAP at Volume 65, No. 130 on July 6, 2000, clarified that, since SNAP (food stamps) are federal benefits, federal law does not allow for an exception for equitable estoppel in administrative error claims.

This rule making is part of the corrective action plan for a recent USDA Food and Nutrition Service Recipient Claim Management Evaluation Review (RCMER). Section 13 (b)(1) of the Food and Nutrition Act of 2008, as amended, requires the department to establish and collect overpayments of SNAP benefits "unless otherwise provided for in this section." The act affords no such provision to compromise claims or bar collection of administrative error claims on the grounds of equitable estoppel.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.18.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects certain DSHS clients who receive food assistance under Basic Food and WASHCAP eliminating the option to have overpayment claims compromised or dismissed using the equitable estoppel doctrine but instead clarifies that overpayment may still be waived, terminated, written off or compromised.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

December 16, 2013

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-20-062, filed 9/29/06, effective 11/1/06)

**WAC 388-410-0025 Am I responsible for an overpayment in my assistance unit?** If your assistance unit (AU) received more Basic Food or WASHCAP benefits than it was supposed to receive, your AU has an overpayment. If you have an overpayment, we determine the amount you were overpaid and set up a claim to recover this overpayment.

(1) We set up an overpayment for the full amount your AU was overpaid for every adult AU member at the time your AU was overpaid.

(2) Each adult member is responsible for the whole overpayment until we recover the entire amount of the overpayment. We do not collect more than the amount your AU was overpaid.

(3) If we determine you are responsible for an overpayment, you are responsible for the overpayment even if you are now in a different AU than you were when you had the overpayment.

(4) You may be responsible for a Basic Food or WASHCAP overpayment even if it was the department's fault you were overpaid.

(5) We do not apply equitable estoppel, as described under WAC 388-02-0495, to Basic Food or WASHCAP overpayments.

(6) We may reduce all or part of an overpayment if we determine you are unable to repay the balance or that doing so would be a hardship. See WAC 388-410-0033.

AMENDATORY SECTION (Amending WSR 06-20-062, filed 9/29/06, effective 11/1/06)

**WAC 388-410-0033 How and when does the department collect a Basic Food or WASHCAP overpayment?**

(1) When we set up an overpayment because you received more Basic Food or WASHCAP benefits than you were supposed to receive, we start to collect the benefits you were overpaid. This includes when we:

(a) Modify an established overpayment to an amount we would not have to set up under WAC 388-410-0030(5); or

(b) Set up an overpayment that we do not have to set up under WAC 388-410-0030(5).

(2) You can repay your overpayment by:

(a) Paying the entire amount at once;

(b) Having us take the amount of your overpayment out of your EBT account;

(c) Making regular payments under a scheduled repayment agreement as described in subsection (4) of this section; or

(d) Having your current Basic Food or WASHCAP benefits reduced.

(3) If you have an inactive EBT account and we cancelled Basic Food or WASHCAP benefits in the account under WAC 388-412-0025, we use the cancelled benefits to reduce the amount of your overpayment.

(4) If your AU currently receives Basic Food or WASHCAP benefits, you can repay your overpayment by making monthly payments. The payments must be more than we would recover through us reducing your benefits. Your AU

or the department can request a change to the agreement if necessary.

(5) If you are responsible for repaying an administrative or inadvertent household error overpayment, we automatically reduce your monthly benefits unless you:

(a) Pay the overpayment all at once;

(b) Set up a repayment agreement with us; or

(c) Arrange with us to compromise (reduce) or waive all or part of your overpayment under section (13) below; or

(d) Request a hearing and continued benefits within ninety days of the date you received your collection action notice.

(6) If you are responsible for an intentional program violation (IPV) overpayment, you must tell us how you want to repay this overpayment within ten days of the date you receive your collection action notice. If you do not do this, we will reduce your current monthly benefits.

(7) If you receive ongoing Basic Food or WASHCAP benefits, we can reduce your monthly benefits to repay the overpayment. We do not reduce your first Basic Food or WASHCAP allotment when we first approve your application for benefits.

(a) If you have an administrative or inadvertent household error overpayment, we reduce your benefits by the greater of:

(i) Ten percent of your monthly benefits; or

(ii) Ten dollars per month.

(b) If you have an IPV overpayment, we reduce your benefits by the greater of:

(i) Twenty percent of your monthly benefits; or

(ii) Twenty dollars per month.

(8) If you do not meet the terms of a repayment agreement with the department, we automatically reduce your current benefits unless you:

(a) Pay all overdue payments to bring your repayment agreement current; or

(b) Ask us to consider a change to the repayment schedule.

(9) If your overpayment claim is past due for one hundred eighty or more days, we refer your overpayment for federal collection. A federal collection includes reducing your income tax refund, Social Security benefits, or federal wages. We do not count your overpayment as past due if you:

(a) Repay the entire overpayment by the due date;

(b) Have your monthly benefits reduced to repay the overpayment; or

(c) Arrange with us to compromise (reduce) or waive all or part of your overpayment under section (13) below; or

(d) Meet the requirements of your scheduled repayment agreement.

(10) If you no longer receive Basic Food or WASHCAP benefits, we can garnish your wages, file a lien against your personal or real property, attach other benefits, or otherwise access your property to collect the overpayment amount.

(11) We suspend collection on an overpayment if:

(a) We cannot find the responsible AU members; or

(b) The cost of collecting the overpayment would likely be more than the amount we would recover.

(12) We can ~~((negotiate the amount of an overpayment #))~~ compromise (reduce) all or part of any unpaid claim when:

(a) ~~((the))~~ The amount you offer to repay is close to what we could expect to receive from you before we can no longer legally collect the overpayment from you((-)); or

(b) We determine that you are unable to repay the balance or that doing so would be a hardship.

(13) We write off unpaid overpayments and release any related liens when:

(a) ~~((We can not possibly collect any more funds))~~ The claim is invalid;

(b) All adult household members die;

(c) The claim balance is less than twenty-five dollars and has been delinquent for ninety days or more;

(d) We determine it is not cost effective to pursue the claim further;

(e) We agreed to accept a partial payment that left an unpaid balance after this payment;((-#))

(f) You have paid ten percent of your monthly benefits or ten dollars, whichever is greater, on an administrative or inadvertent household error overpayment for at least thirty-six months;

~~((e) There is an unpaid balance left after an overpayment case has been suspended))~~ (g) The claim has been delinquent for three ((consecutive)) years or more unless ((a collection may be possible)) we plan to pursue the claim through the Treasury Offset Program((-); or

(h) An administrative law judge orders us to do so.

(14) If your AU has an overpayment from another state, we can collect this overpayment if the state where you were overpaid does not plan to collect it and they give us the following:

(a) A copy of the overpayment calculation and overpayment notice made for the client; and

(b) Proof that you received the overpayment notice.

(15) You can ask for a hearing to contest whether you owe an overpayment, whether we calculated the overpayment correctly, or whether we should have waived an overpayment.

**WSR 14-01-110**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed December 18, 2013, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-069.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-410-0020 What happens if I receive more Basic Food or WASHCAP benefits than I am supposed to receive? and 388-410-0030 How does the department calculate and set up my Basic Food or WASHCAP overpayment?

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 January 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by January 8, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend rules under WAC 388-410-0020 and 388-410-0030 to make changes that are consistent with federal requirements and regulations concerning establishment, collection and calculation of Basic Food benefit errors and overpayment claims.

Reasons Supporting Proposal: This rule making is part of the corrective action plan for a recent USDA Food and Nutrition Service Recipient Claim Management Evaluation Review (RCMER). The RCMER found that Washington Administrative Code (WAC) was inconsistent with federal regulations concerning the establishment of claims for supplemental nutrition assistance program (SNAP) benefit overpayments. The department must establish overpayments for SNAP even if the department does not meet federal timeliness standards for establishing claims.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.18.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects certain DSHS clients who receive more benefits than they are supposed to receive. The changes make state rules consistent with federal regulations.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

December 12, 2013  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-20-062, filed 9/29/06, effective 11/1/06)

**WAC 388-410-0020 What happens if I receive more Basic Food or WASHCAP benefits than I am supposed to receive?** (1) If you receive more Basic Food or WASHCAP benefits than you were supposed to receive, your assistance unit (AU) has an overpayment. There are three types of overpayments:

(a) **Administrative error overpayment:** When you received too many benefits because the department made a mistake.

(b) **Inadvertent household error overpayment:** When you received too many benefits because you made a mistake or didn't understand what you were supposed to do.

(c) **Intentional program violation (IPV) overpayment:** When you received too many benefits because you broke a federal food (~~stamp~~) assistance rule on purpose. If you have an IPV, you could be disqualified from receiving Basic Food or WASHCAP benefits under chapter 388-446 WAC.

~~((2) We must discover an overpayment within certain time frames for us to establish and collect an overpayment. If we do not discover that you received too many benefits within the time frame described below based on the type of overpayment, we will not set up an overpayment:~~

<del>(a) Administrative error overpayment:</del>	<del>(b) Inadvertent household error overpayment:</del>	<del>(c) Intentional program violation overpayment:</del>
<del>We must discover the overpayment within twelve months of the date you were overpaid.</del>	<del>We must discover the overpayment within twenty-four months of the date you were overpaid.</del>	<del>We must discover the overpayment within seventy-two months of the date you were overpaid.))</del>

AMENDATORY SECTION (Amending WSR 06-20-062, filed 9/29/06, effective 11/1/06)

**WAC 388-410-0030 How does the department calculate and set up my Basic Food or WASHCAP overpayment?** (1) We calculate the amount of your Basic Food or WASHCAP overpayment by counting the difference between:

- (a) The benefits your assistance unit (AU) received; and
- (b) The benefits your AU should have received.

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

- (a) Had correct and complete information; and
- (b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and 388-418-0007, you do not receive the earned income deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) If we paid you too few Basic Food or WASHCAP benefits for a period of time, we will use the amount we underpaid your AU to reduce your overpayment if:

- (a) We have **not** already issued you benefits to replace what you were underpaid; and
- (b) We have **not** used this amount to reduce another overpayment.

(5) We **must** set up an inadvertent household error or administrative error overpayment if:

(a) We discovered the overpayment through the federal quality control process;

(b) You currently receive Basic Food or WASHCAP benefits; or

(c) The overpayment is over one hundred twenty-five dollars and you do not currently receive Basic Food or WASHCAP benefits.

(6) If you have an inadvertent household error that we referred for prosecution or an administrative disqualification

hearing, we will not set up and start collecting the overpayment if doing so could negatively impact this process.

(7) We set up an intentional program violation overpayment based on the results of an administrative disqualification hearing (chapter 388-02 WAC) unless:

- (a) Your AU has repaid the overpayment; or
- (b) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

(8) We must calculate the overpayment amount:

(a) For an administrative error overpayment - up to twelve months prior to when we became aware of the overpayment;

(b) For an inadvertent household error overpayment - for no more than twenty-four months before we became aware of the overpayment; and

(c) For intentional program violation (IPV) overpayments - from the month the act of IPV first occurred but no more than six years before we became aware of the overpayment.

**WSR 14-01-111**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed December 18, 2013, 10:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-20-041.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-412-0040 Can I get my benefits replaced?, 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?, and 388-446-0015 What is an intentional pro-

gram violation (IPV) and administrative disqualification hearings (ADH) for food assistance?

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 January 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by January 8, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend rules under WAC 388-446-0015, 388-412-0040 and 388-412-0046, to make changes concerning food benefit trafficking rules and propose policy for dealing with excess electronic benefit transfer (EBT) card replacement requests and related fraud referrals.

Reasons Supporting Proposal: The USDA Food and Nutrition Service (FNS) issued final rules to amend supplemental nutrition assistance program (SNAP) regulations to allow state agencies to deny requests for replacement EBT cards until contact is made by the SNAP household with the state agency. FNS also changed regulations to amend the definition of the term "trafficking" to include the attempt to buy or sell SNAP benefits and/or EBT cards.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 271.2, 274.2, and 274.6.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects certain DSHS clients who request multiple EBT card replacements within a twelve month period and anyone involved in trafficking SNAP benefits. The changes make state rules consistent with federal regulations and implement some optional measures to improve program integrity.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

December 4, 2013

Katherine I. Vasquez  
Rules Coordinator

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

**WAC 388-412-0040 Can I get my benefits replaced?**

Under certain conditions, we may replace your benefits.

(1) You may get your EBT cash and/or food assistance benefits replaced if:

(a) We make a mistake that causes you to lose benefits;

(b) The EBT card mailed to you is stolen from the mail; you never had the ability to use the benefits; and you lost benefits;

(c) You left a drug or alcohol treatment facility on or before the fifteenth of the month and the facility does not have enough food assistance benefits in their EBT account for one-half of the allotment that they owe you;

(d) Your EBT benefits that were recently deposited into an inactive EBT account were canceled by mistake; or

(e) The food that your household purchased with food assistance benefits was destroyed in a household disaster or misfortune.

(i) For us to replace your benefits, you must report the loss to the department within ten days from the date of the loss.

(ii) We replace the amount of your loss, up to a one-month benefit amount.

(2) We will not replace your benefits if your loss is for a reason other than those listed in subsection (1) above if:

(a) We decided that your request is fraudulent;

(b) Your food assistance benefits were lost, stolen or misplaced after you received them;

(c) You already received two replacements for food destroyed in household disaster or misfortune within the last five months; or

(d) You received disaster supplemental nutrition assistance program (D-SNAP) benefits for the same month you requested a replacement for food assistance.

(3) **EBT cards.** It is your responsibility to keep track of your household's EBT card.

(a) If you have multiple EBT cards replaced, we may suspect you to be trafficking benefits as described under WAC 388-412-0046 (2)(d).

(b) When you request your fifth (initial card plus four replacements) and subsequent card within a twelve-month period, we will ask you to contact us and explain why you have multiple replacements before we issue another replacement card. If you don't contact us as instructed we will not replace your EBT card.

(c) If we suspect trafficking, we will refer your case for investigation by the office of fraud and accountability. Persons trafficking in food assistance benefits may be subject to fines, disqualification from food assistance, and legal action including criminal prosecution.

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

**WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?** (1) What is the purpose of DSHS cash benefits?

(a) DSHS cash assistance benefits are provided to low-income residents who qualify for public assistance programs. These benefits are intended to help pay for basic living expenses as described under RCW 74.04.770. TANF cash grants must be used for the sole benefit of the children, and we may require proof that you are using your TANF cash assistance to benefit your children as allowed under RCW 74.12.260.

(b) Your electronic benefit transfer (EBT) card or cash assistance benefits may only be used by you, an eligible member of your household, or an authorized representative/protective payee for the purposes of your cash assistance program. You are not allowed to sell, attempt to sell, exchange, or donate your EBT card or benefits to any other person or entity.

(c) You may use your cash benefits to pay a reasonable amount of basic living expenses such as:

- (i) Shelter;
- (ii) Utilities such as heating, telephone, water, sewer, garbage, and recycling;
- (iii) Food;
- (iv) Transportation;
- (v) Clothing;
- (vi) Household maintenance;
- (vii) Personal hygiene;
- (viii) Employment or school related items; and
- (ix) Other necessary incidentals and items.

(d) It is not legal to use electronic benefit transfer (EBT) cards or cash obtained with EBT cards to:

- (i) Gamble. Gambling includes:
  - (A) The purchase of lottery tickets;
  - (B) The purchase of pull tabs;
  - (C) Use of punch boards;
  - (D) Purchase of bingo cards;
  - (E) Betting on horse racing;
  - (F) Participating in casino games; and
  - (G) Participating in other games of chance as found in chapters 9.46, 67.16 and 67.70 RCW.

(ii) Participate in or purchase any activities located in a tattoo, body piercing, or body art shop licensed under chapter 18.300 RCW;

(iii) Purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;

(iv) Purchase any alcoholic items regulated under Title 66 RCW;

(v) Purchase or participate in any activities in any of the following locations:

- (A) Taverns licensed under RCW 66.24.330;
- (B) Beer/wine specialty stores licensed under RCW 66.24.371;
- (C) Nightclubs licensed under RCW 66.24.600;
- (D) Contract liquor stores defined under RCW 66.04.-010;
- (E) Bail bond agencies regulated under chapter 18.185 RCW;

(F) Gambling establishments licensed under chapter 9.46 RCW;

(G) Adult entertainment venues with performances that contain erotic material where minors under the age of eighteen are prohibited under RCW 9.68A.150;

(H) Any establishments where persons under the age of eighteen are not permitted.

(e) If you use your electronic benefit transfer (EBT) card or cash obtained from your EBT card illegally we may:

(i) Assign a protective payee to manage your cash assistance benefits under WAC 388-460-0035;

(ii) For households receiving TANF, require proof that your benefits are being used for the benefit of the children in the household;

(iii) Terminate your cash benefits; or

(iv) Pursue legal action, including criminal prosecution.

(2) What is the purpose of DSHS food assistance benefits?

(a) DSHS food assistance benefits including those from the Basic Food program, state funded basic food program for legal immigrants (FAP), Washington state combined application project (WASHCAP), and transitional food assistance (TFA) help low-income individuals and families have a more nutritious diet by providing food assistance benefits through EBT cards for eligible households to buy groceries.

(b) You, members of your household, or an authorized representative may use your food assistance benefits to buy food items for your household from food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. Department of Agriculture Food and Nutrition Service (FNS).

(c) You can use your food assistance benefits to buy items such as:

- (i) Breads and cereals;
- (ii) Fruits and vegetables;
- (iii) Cheese, milk, and other dairy products;
- (iv) Meats, fish, poultry, and eggs;
- (v) Most other food items that are not prepared hot foods; and
- (vi) Seeds and plants that produce food.

(d) It is not legal to:

(i) Give your EBT card or benefits to anyone who is not in your food assistance household or your authorized representative.

(ii) Use food benefits on your EBT card for any purpose other than to buy food for eligible household members.

(iii) Exchange your food benefits for anything of value (trafficking). Examples of illegal trafficking include exchanging food benefits or attempting to exchange food benefits for cash, drugs, weapons or anything other than food from an authorized retailer.

(iv) Sell, attempt to sell, exchange, or donate your EBT card, EBT card number, personal identification numbers (PINs), or any benefits to any person or entity.

(v) Buy, attempt to buy, or steal someone's EBT card, EBT card number, or PIN.

(vi) Sell or trade any food that was purchased using your food assistance benefits for cash, drugs, alcohol, tobacco products, firearms, or anything of value.

~~((vi))~~ (vii) Use food benefits to buy nonfood items such as cigarettes, tobacco, beer, wine, liquor, household supplies, soaps, paper products, vitamins, medicine, or pet food.

(e) If you intentionally misuse your food assistance benefits, you may be:

(i) Disqualified for an intentional program violation under WAC 388-446-0015 and 388-446-0020. If you are disqualified you will lose your benefits for at least one year and up to a lifetime. The disqualification continues even if you move to another state.

(ii) Subject to fines.

(iii) Subject to legal action, including criminal prosecution. DSHS will cooperate with state, local and federal prosecuting authorities to prosecute trafficking in food assistance/SNAP benefits.

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

**WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearings (ADH) for food assistance.[?]** (1) An intentional program violation (IPV) is an act in which someone intentionally:

(a) Misrepresents, conceals or withholds facts in order to be found eligible for benefits or to receive more benefits than their actual circumstances would allow. This includes making a false statement regarding household circumstances.

(b) Acts in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations or any state statute relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits including:

(c) Attempts to buy, sell, steal, or trade food assistance benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, EBT card numbers or personal identification numbers (PINs), for cash or anything other than eligible food, alone or acting with others.

(2) If we suspect someone has committed an IPV we refer their case for an administrative disqualification hearing (ADH), if:

(a) The suspected IPV causes an over issuance of four hundred fifty dollars or more; or

(b) The suspected IPV is due to the trafficking of food benefits; and

(c) The person has not been referred for criminal proceedings.

(3) An administrative disqualification hearing (ADH) is a formal hearing to determine if a person committed an IPV. ADHs are governed by the rules found in chapter 388-02 WAC. However, rules in this section are the overriding authority if there is a conflict.

(4) A person suspected of an IPV can choose to waive their right to an ADH by signing a disqualification consent agreement that waives their right to the hearing and accepts the IPV penalty under WAC 388-446-0020.

(5) If someone commits one or more IPV's and is suspected of committing another, we refer them for an ADH when the act of suspected violation occurred:

(a) After we mailed the disqualification notice to the client for the most recent IPV; or

(b) After criminal proceedings for the most recent IPV are concluded.

(6) When we suspect someone has committed an IPV, we refer their case for an administrative disqualification hearing (ADH). The office of administrative hearings (OAH) sends them notice of an ADH at least thirty days in advance of the hearing date. OAH sends the notice by certified mail, or personal service. The notice will contain the following information:

(a) The date, time, and place of the hearing;

(b) The charges against the person;

(c) A summary of the evidence, and how and where they may examine the evidence;

(d) A warning that a decision will be based entirely on the evidence the department provides if they fail to appear at the hearing;

(e) A statement that the person has ten days from the date of the scheduled hearing to show good cause for failing to attend the hearing and to ask for a new hearing date;

(f) A warning that a determination of IPV will result in a disqualification period; and

(g) A statement that if we schedule a telephone hearing, they can request an in-person hearing by filing a request with the administrative law judge one week or more prior to the date of the hearing.

(7) The department may combine an ADH and a regular hearing when the reason for both hearings is related.

(8) The person or a representative shall have the right to one continuance of up to thirty days if a request is filed ten days or more prior to the hearing date.

(9) The administrative law judge (ALJ) will conduct the ADH and render a decision even if the person or representative fails to appear, unless within ten days from the date of the scheduled hearing:

(a) The person can show good cause for failing to appear; and

(b) The person or representative requests the hearing be reinstated.

(10) We may change a scheduled telephone hearing to an in-person hearing if this is requested by the person or department representative at least a week in advance. The person requesting a change less than one week in advance must show good cause for the requested change.

(11) The ALJ issues a final decision as specified in WAC 388-02-0215 through 388-02-0525. The decision determines whether the department had established with clear and convincing evidence that the person committed and intended to commit an IPV.

(12) The department and the client each have the right to request a reconsideration of the decision as specified in WAC 388-02-0610 through 388-02-0635. The final order or the reconsideration decision is the final agency decision.

(13) We will not implement a disqualification and continue benefits at the current amount if:

(a) The client can show good cause for not attending the hearing within thirty days from the date the disqualification notice was mailed; and

(b) An administrative law judge determines the client had good cause; or

(c) The client requests reconsideration or files a petition for judicial review to appeal the disqualification as specified in WAC 388-02-0530 (1) or (4).

**WSR 14-01-113**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed December 18, 2013, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-081, 13-07-013, and 13-09-067.

Title of Rule and Other Identifying Information: The department is proposing to amend the following rules to implement annual adjustments to standards for the Washington Basic Food program: WAC 388-450-0185, 388-450-0190, 388-450-0195, 388-478-0060, 388-492-0070, and 388-412-0015.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on January 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 23, 2014.

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 January 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by January 8, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments adopt federal standards for federal fiscal year (FFY) 2014 and update state utility allowances and WASH-CAP standards as required under federal regulations. The proposed amendments also decrease the maximum allotment with elimination of the ARRA temporary increase. All of the proposed changes are currently in effect via emergency rule making (WSR 13-27-036 [13-22-030] dated October 30, 2013).

Reasons Supporting Proposal: The proposed amendments adopt Basic Food standards for FFY 2014 in order to comply with requirements of the United States Department of Agriculture, Food and Nutrition Service (FNS), per Supplemental Nutrition Assistance Program (SNAP) Administrative Notice 13-26: SNAP - Fiscal Year (FY) 2014 Cost-of-Living Adjustments (COLAs) and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, and FNS Talking Points for States to Use dated August 7, 2013, approving the proposed SUA. The amendments update Basic Food standards for FFY

2014 to comply with requirements of the United States Department of Agriculture, Food and Nutrition Service (FNS 7 C.F.R. § 273.9 (d)(iii)(B), Cover memo dated July 1, 2013, SUA for FFY 2014 and SUA forecast for FFY 2014.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Rule is necessary because of federal law, Food and Nutrition Act of 2008 as amended, Title 7 C.F.R. § 273.10, Title 7 C.F.R. § 273.2 and Program (SNAP) Administrative Notice 13-26: SNAP - FY 2014 COLAs and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, community services division, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

December 16, 2013  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-18-024, filed 8/27/12, effective 9/27/12)

**WAC 388-412-0015 General information about your food assistance allotments.** (1) Your monthly allotment under the Washington Basic Food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) programs is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

**(2) How we determine monthly allotments:**

(a) We calculate your monthly allotment for federally funded Basic Food as described under WAC 388-450-0162;

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

**(3) Maximum allotment:**

(a) The maximum allotment for the number of people in your AU eligible for federally funded Basic Food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

**(4) Prorated benefits in the first month** - If we determine you are eligible for food assistance, your first month's



benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a thirty-day month:

(a) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

**(5) Combined allotment for first and second month's benefits** - If you apply for benefits on or after the sixteenth of the month, and we determine you are eligible for food assistance, we issue both the first and second months benefits in one allotment if you are eligible for both months.

**(6) Minimum allotment** - Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) ~~(Sixteen)~~ Fifteen dollars if your AU has one or two members, and at least one person is eligible for federally funded Basic Food.

(b) ~~(Eight)~~ Eleven dollars if your AU has one or two members, and all members of your AU are eligible for state-funded FAP.

**(7) Use of food assistance benefits** - Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

AMENDATORY SECTION (Amending WSR 12-24-018, filed 11/27/12, effective 12/28/12)

**WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?**

We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	\$ <del>(+49)</del> <u>152</u>
2	\$ <del>(+49)</del> <u>152</u>
3	\$ <del>(+49)</del> <u>152</u>
4	\$ <del>(+60)</del> <u>163</u>
5	\$ <del>(+87)</del> <u>191</u>
6 or more	\$ <del>(+14)</del> <u>219</u>

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

(a) Keep work, look for work, or accept work;

(b) Attend training or education to prepare for employment; or

(c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 13-11-103, filed 5/20/13, effective 6/20/13)

**WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?** The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

(a) Monthly rent, lease, and mortgage payments;

(b) Property taxes;

(c) Homeowner's association or condo fees;

(d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

(i) AU intends to return to the home;

(ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and

(iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (4) from your AU's gross income. The result is your AU's ~~(net)~~ countable income.

(3) Finally, we subtract one-half of your AU's ~~(net)~~ countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of four hundred ~~(sixty-nine)~~ seventy-eight dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred ~~(sixty-nine)~~ seventy-eight dollars.

AMENDATORY SECTION (Amending WSR 11-24-027, filed 12/1/11, effective 1/1/12)

**WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits?** (1) We use a standard utility allowance (SUA) of ~~((three hundred ninety-four))~~ four hundred nine dollars instead of your actual utility costs when we determine your assistance unit's:

(a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or

(b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.

(2) We considered the average cost of the following utilities to determine the value of the SUA:

(a) Heating and cooling fuel such as electricity, oil, or gas;

(b) Electricity;

(c) Water and sewer;

(d) Well or septic tank installation/maintenance;

(e) Garbage/trash collection; and

(f) Telephone service.

(3) The department uses the SUA if you have utility costs separate from your rent or mortgage payment or if you receive a low income home energy assistance program (LIHEAP) benefit during the year.

AMENDATORY SECTION (Amending WSR 12-24-018, filed 11/27/12, effective 12/28/12)

**WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?** If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE <del>((10-1-2012))</del> <u>11-1-2013</u>				
Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	<del>\$(1,211)</del> <u>1,245</u>	<del>\$(931)</del> <u>958</u>	<del>\$(200)</del> <u>189</u>	<del>\$(1,536)</del> <u>1,580</u>
2	<del>((1,640))</del> <u>1,681</u>	<del>((1,261))</del> <u>1,293</u>	<del>((367))</del> <u>347</u>	<del>((2,081))</del> <u>2,133</u>
3	<del>((2,069))</del> <u>2,116</u>	<del>((1,591))</del> <u>1,628</u>	<del>((526))</del> <u>497</u>	<del>((2,625))</del> <u>2,686</u>
4	<del>((2,498))</del> <u>2,552</u>	<del>((1,921))</del> <u>1,963</u>	<del>((668))</del> <u>632</u>	<del>((3,170))</del> <u>3,239</u>
5	<del>((2,927))</del> <u>2,987</u>	<del>((2,251))</del> <u>2,298</u>	<del>((793))</del> <u>750</u>	<del>((3,714))</del> <u>3,791</u>
6	<del>((3,356))</del> <u>3,423</u>	<del>((2,581))</del> <u>2,633</u>	<del>((952))</del> <u>900</u>	<del>((4,259))</del> <u>4,344</u>
7	<del>((3,785))</del> <u>3,858</u>	<del>((2,911))</del> <u>2,968</u>	<del>((1,052))</del> <u>995</u>	<del>((4,803))</del> <u>4,897</u>
8	<del>((4,214))</del> <u>4,294</u>	<del>((3,241))</del> <u>3,303</u>	<del>((1,202))</del> <u>1,137</u>	<del>((5,348))</del> <u>5,450</u>
9	<del>((4,643))</del> <u>4,730</u>	<del>((3,571))</del> <u>3,638</u>	<del>((1,352))</del> <u>1,279</u>	<del>((5,893))</del> <u>6,003</u>
10	<del>((5,072))</del> <u>5,166</u>	<del>((3,901))</del> <u>3,973</u>	<del>((1,502))</del> <u>1,421</u>	<del>((6,438))</del> <u>6,556</u>
Each Additional Member	<del>+((429))</del> <u>436</u>	<del>+((330))</del> <u>335</u>	<del>+((150))</del> <u>142</u>	<del>+((545))</del> <u>553</u>

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

AMENDATORY SECTION (Amending WSR 11-13-028, filed 6/7/11, effective 7/1/11)

**WAC 388-492-0070 How are my WASHCAP food benefits calculated?** We calculate your food benefits as follows:

(1) We begin with your gross income.

(2) We subtract the current standard deduction for one person under WAC 388-450-0185 from your gross income to get your countable income.

(3) We figure your shelter cost based on information we receive from the Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:

(a) Three hundred dollars or more a month for shelter, we use ~~((three hundred eighty))~~ four hundred dollars as your shelter cost; or

(b) Less than three hundred dollars for shelter, we use ~~((one hundred ninety-five))~~ two hundred and ten dollars as your shelter cost; and

(c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for Basic Food under WAC 388-412-0015.

### WSR 14-01-115

#### PROPOSED RULES

#### DEPARTMENT OF ECOLOGY

[Order 13-03—Filed December 18, 2013, 11:33 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 13-12-032.

Title of Rule and Other Identifying Information: Ecology is proposing a new rule, chapter 173-485 WAC, Petroleum refinery greenhouse gas emission requirements.

Hearing Location(s): Department of Ecology Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008 (directions [http://www.ecy.wa.gov/images/offices/map\\_nwro.pdf](http://www.ecy.wa.gov/images/offices/map_nwro.pdf)), on January 22, 2014, at 10:00 a.m.

Date of Intended Adoption: April 1, 2014.

Submit Written Comments to: Margo Thompson, P.O. Box 47600, Olympia, WA 98504-7600, e-mail [AQComments@ECY.WA.GOV](mailto:AQComments@ECY.WA.GOV), fax (360) 407-7534, by January 31, 2014.

Assistance for Persons with Disabilities: Contact Margo Thompson at (360) 407-6827 by January 15, 2014. For special accommodations or documents in alternate format, call (360) 407-6800, 711 (relay service), or 877-833-6341 (TTY).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule-making proposal is to establish reasonably available control technology (RACT) to limit greenhouse gas (GHG) emissions from petroleum refineries in Washington state.

Reasons Supporting Proposal: This rule proposal was developed under court order. In 2011, a federal district court decided that state regulations in Washington's federally approved air quality state implementation plan require us to establish RACT for petroleum refinery GHG emissions. In 2012, the district court issued an order requiring the agencies to make this RACT determination by May 2014. Because the new standards affect three or more refineries, state law requires ecology to establish the new standards in a rule.

Although the Ninth Circuit Court of Appeals has stayed the 2012 order, the 2011 court case is in appeal process and has not yet been finally resolved. Until there is resolution, ecology is proceeding with this rule-making process.

The proposed rule provides facilities with the flexibility necessary to meet the requirement and recognizes the actions of those refineries that may already implement the required efficiency measures. Ecology proposes that the five Washington petroleum refineries meet GHG RACT requirements using one of two options. They are:

#### 1. Energy efficiency standard:

- A refinery may demonstrate reasonably available energy efficiency performance by scoring in the top fiftieth percentile of similar-sized United States refineries.
- Implementing agencies will use the Solomon EII® scoring system for the refineries as the benchmark demonstration of an investment in energy efficiency measures at the facility. This means if a facility is among the top fifty percent of United States similar-sized refineries according to the Solomon EII® score, the facility has demonstrated compliance with GHG RACT.

#### 2. Emission reduction requirement:

- A refinery that does not meet the energy efficiency standard must implement GHG emission reduction projects. These projects must achieve GHG emission reductions that cumulatively add up to ten percent of the refinery's baseline-year GHG emissions. Those reductions are allowed to occur over approximately a ten year period, or
- The refinery implements emission reduction and efficiency projects that allow it to meet the energy efficiency standard.

Statutory Authority for Adoption: Chapter 70.94 RCW provides sufficient authority to adopt rule changes.

Statute Being Implemented: Chapter 70.94 RCW.

Rule is necessary because of federal court decision, this rule was developed under a federal court order in *Washington Environmental Council v. Sturdevant*, 834 F.Supp.2d 1209 (W.D. Wash. 2011).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule proposal was developed under court order. In *Washington Environmental Council v. Sturdevant*, the U.S. District Court for the Western District of Washington decided that state rules in Washington's state implementation plan (SIP) require ecology to establish RACT for petroleum refinery GHG emissions. Because the RACT analysis and determination affects three or more refineries, state statute requires ecology to establish the new standards in rule. The order on remedies issued on March 27, 2012, established a schedule to implement the judge's decision. The order on remedies requires the rule to be effective by May 27, 2014.

Name of Proponent: Washington state department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Margo Thompson, Department of Ecology, Lacey, Washing-

ton, (360) 407-1617; Implementation and Enforcement: Mark Buford, Northwest Clean Air Agency, Bellingham, Washington, (360) 428-6810 or Steve VanSlyke, Puget Sound Clean Air Agency, Seattle, Washington, (206) 689-4052.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

Note: Due to size limitations relating to the filing of documents with the code reviser, the small business economic impact statement (SBEIS) does not contain full explanation of ecology's analysis. Additionally, it does not contain raw data or all summaries of data used in the analysis, or all of ecology's analysis of this data. However, this information is being placed in the rule-making file, and is available upon request for the rule file. A full analysis of compliance costs is available in the associated cost-benefit analysis for this rule <https://fortress.wa.gov/ecy/publications/SummaryPages/1302033.html>.

Executive Summary: Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined that the proposed rule, Petroleum refinery greenhouse gas emission requirements, chapter 173-485 WAC, does not have a disproportionate impact on small business. This is because the rule only impacts large businesses. (A small business is defined as having fifty or fewer employees.) Ecology did not, therefore, include language in the proposed rule to minimize disproportionate impacts.

The SBEIS is intended to be read with the associated cost-benefit analysis (ecology publication #13-02-033), which contains more in-depth discussion of the analysis.

Ecology determined that the parent companies that own the five refineries to which the proposed rule applies are not small businesses as defined by chapter 19.85 RCW (employing fifty or fewer people). From firm annual reports and statements to the public and shareholders, ecology identified the approximate employment of the parent companies as:

- BP: 85,700
- Phillips 66: 13,500
- Shell Oil: 87,000
- Tesoro: 5,700
- US Oil and Refining (Astra Transcor Energy): 350

Ecology did not involve small businesses in the development of the proposed rule. Similarly, ecology did not involve local governments beyond the two local air agencies involved in the RACT determination and rule-making process.

We used the Washington state office of financial management's 2002 Washington input-output model (OFM-IO) to estimate the proposed rule's first round impact on jobs across the state. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry are entered in the OFM-IO model as a decrease in spending and investment.

We estimated that up to thirteen jobs statewide, over twenty years, are likely to be lost under the proposed rule, based on the overall highest possible present-value of com-

pliance costs, occurring in the petroleum refining industry. This includes direct job losses in the petroleum refining industry, additional employment or utilization of existing petroleum refinery employees performing reporting and recordkeeping tasks, and transfer payments to licensed professional external engineers for report review.

#### Section 1: Background:

Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined that the proposed rule, Petroleum refinery greenhouse gas emission requirements, chapter 173-485 WAC, does not have a disproportionate impact on small business. This is because the rule only impacts large businesses. (A small business is defined as having fifty or fewer employees.) Ecology did not, therefore, include language in the proposed rule to minimize disproportionate impacts.

The SBEIS is intended to be read with the associated cost-benefit analysis (ecology publication #13-02-033), which contains more in-depth discussion of the analysis.

#### Description of the Proposed Rule:

The proposed rule requires:

- Demonstrated emissions reduction, by a petroleum refinery either:
  - o Meeting an Energy Intensity Index ® (EII®)<sup>1</sup> greater than or equal to the fiftieth percentile EII® for petroleum refineries its size, using any EII® report issued between 2006 and the first annual report in 2014, **OR**
  - o By 2025 reporting (2024 data), implementing sufficient projects that result in a ten percent reduction from 2010 (or 2011 if 2010 data is not representative) emissions, or meet the energy efficiency standard described in option 1, above.
- Annual reporting:
  - o Submitting annual reports on October 1 until compliance with either standard above is demonstrated.
- Recordkeeping:
  - o Keeping records supporting reports and compliance for five years after last report.

Reasons for the Proposed Rule: Ecology initially undertook this rule making in response to a March 27, 2012, order on remedies entered in the United States District Court – Western District of Washington at Seattle (Case No. C11-417 MJP, *Washington Environmental Council, et al. vs. Sturdevant, et al.*). In that order, ecology, Puget Sound Clean Air Agency (PSCAA), and Northwest Clean Air Agency (NWCAA) were ordered to complete a RACT determination process pursuant to RCW 70.94.154 within twenty-six months, addressing GHGs for each of five Washington state petroleum refineries owned and operated by:

- BP PLC (BP).
- Phillips 66 Company (Phillips 66).
- Shell Oil Company (Shell).
- Tesoro Refining and Marketing Company (Tesoro).
- US Oil & Refining Company (US Oil).

Because the RACT analysis and determination affects three or more refineries, state law requires ecology to establish the new standards in rule. The order on remedies established a schedule to implement the judge's decision, and required the rule to be effective by May 27, 2014.

On July 10, 2013, a three judge panel of the 9th Circuit Court of Appeals heard an appeal of the district court decision. On October 17, 2013, the court ruled the plaintiffs do not have standing to bring a citizen suit under the Clean Air Act to force state and local air agencies to regulate greenhouse gas. At the time of this publication, the 2011 court case is still in the appeal process and pending resolution. At this time, ecology is proceeding with rule making per the original schedule unless alternate instruction is received.

Petroleum refineries in Washington state: The proposed rule applies specifically to five petroleum refineries in Washington state, as listed above in section 1.3. Ecology estimated relevant<sup>2</sup> 2010 emissions for the five petroleum refineries as follows:

**Table 1: Petroleum Refinery Emissions**

Facility	Metric Tons per Year of CO2-Equivalent Emissions <sup>3</sup>
BP	2,536,740
Phillips 66	880,730
Shell*	1,578,330
Tesoro**	1,164,670
US Oil**	147,120
TOTAL	6,307,590
* The Shell calculation excludes the emissions from electricity production at the cogeneration unit.	
** 2011 emissions (due to plant shutdown affecting 2010 data).	

All confidential business information (CBI) data used in making the determination was provided only to NWCAA or PSCAA, depending on which refineries they regulate. Ecology has not received any of the data covered under CBI requirements. Because of this, we do not have comprehensive data on specific facility attributes, emissions and energy efficiency, completed or planned projects, reports made to Solomon Associates, or evaluations and results provided by Solomon Associates. We feel that, despite lack of this data and information, this analysis addresses the assessments required under the Regulatory Fairness Act.

Section 2: Analysis of Compliance Costs for Washington Businesses:

Emissions reduction costs: We did not have sufficient public data to develop refinery-specific estimates of costs based on technology and processes specific to each refinery. Due to the need to maintain the confidentiality of business data, within the petroleum refinery owner companies, and throughout the rule-making process (especially as regards recordkeeping), we did not have comprehensive data on specific facility attributes, emissions and energy efficiency, completed or planned projects, reports made to Solomon

Associates, or evaluations and results provided by Solomon Associates.

Instead of making refinery-technology specific estimates, we estimated the results of complying with the proposed rule based on the incentives it creates: To demonstrate emissions reductions, and thus compliance with the energy efficiency standard in the first year, or invest in emissions-reduction and efficiency projects in subsequent years. To account for uncertainty as to which projects, and how many projects, would be done when, we estimated a range of present value costs associated with all five refineries complying immediately with the energy efficiency standard, through all five refineries investing in emissions-reduction and efficiency projects in 2024 (for the 2025 reporting year).

Based on estimated 2010 or 2011 emissions, we estimated the total reductions in emissions that would have to occur across all five plants as 630,759 metric tons of CO2 equivalent emissions, or an average reduction per refinery of 126,152. Confident and viable estimates for emissions reduction technology at petroleum refineries were only available for reductions to steam systems (e.g. boilers), with associated efficiency improvements. Using reductions in steam systems as an example, calculated the average cost of a one percent reduction to steam-system emissions and used that to estimate the equivalent reduction to total emissions for all applicable technologies at the refinery, and total cost estimation for complying with a ten percent reduction in total emissions at an average plant. We expect these estimates based on technologically based projects to generate conservatively high estimates of costs, as compared to other systems (that lacked representative data) and programmatic modifications.

We estimated that a one percent reduction in boiler emissions cost \$90,000 – \$137,000, and represented at 0.101 percent reduction in total emissions at the plant across all technologies, based on relative 2010 emissions from boilers and from refineries as a whole.<sup>4</sup> Therefore, a ten percent reduction in total emissions was equivalent to a ninety-nine percent reduction in the equivalent value of boiler emissions.<sup>5</sup>

Based on this, we estimated a total cost across all five plants of \$8.9 - \$13.5 million, in nominal (at the time it is spent) value.<sup>6</sup> We then calculated the discounted present value of this compliance cost for data years 2014 through 2024, allowing for variance in the year the emissions reduction is achieved. Table 2 summarizes these discounted present values of this estimated compliance cost.

Ecology also expects costs of efficiency improvements to fall over time, as new technological advances are made in efficiencies. Also as present-value costs of emissions reductions are lower for later years, ecology expects refineries complying with the ten percent reduction to delay installation of emissions reduction technology that is not currently in-use or planned.

**Table 2: Discounted Present-Value Costs of Ten Percent Emissions Reduction**

If All Five Refineries:	Technological Costs LOW	Technological Costs HIGH
Meet EII® standard now	\$0	\$0
Meet the 10% in 2014 (report 2015):	\$8,787,983	\$13,350,466

If All Five Refineries:	Technological Costs LOW	Technological Costs HIGH
Meet in 2015 (report 2016):	\$8,532,022	\$12,961,618
Meet in 2016 (report 2017):	\$8,283,517	\$12,584,095
Meet in 2017 (report 2018):	\$8,042,249	\$12,217,568
Meet in 2018 (report 2019):	\$7,808,009	\$11,861,716
Meet in 2019 (report 2020):	\$7,580,591	\$11,516,229
Meet in 2020 (report 2021):	\$7,359,797	\$11,180,805
Meet in 2021 (report 2022):	\$7,145,434	\$10,855,151
Meet in 2022 (report 2023):	\$6,937,315	\$10,538,981
Meet in 2023 (report 2024):	\$6,735,257	\$10,232,021
Meet in 2024 (report 2025):	\$6,539,085	\$9,934,001

Reporting costs: We estimated reporting costs based on the EPA's past assumptions about the types of employees or outside contractors required for reporting greenhouse gas emissions, as well as the amounts of time those workers would require for the task.<sup>7</sup> We also included assumed hours required for a licensed professional engineer to review and certify reports and supporting data. These assumptions are summarized in Table 3, which also includes the associated wage by type of worker, and loading factors to account for overhead and current dollar values.<sup>8</sup> The loading factor accounts for 4.35 percent benefits loading, and seventeen percent overhead loading.<sup>9</sup>

**Table 3: Inputs to Reporting Costs with Loading Factor**

	First year hours	Subsequent year hours	Wage 2012\$	Loaded wage 2012\$	Loaded wage 2013\$
Senior Management	0.05	0.04	\$51.76	\$62.81	\$64.06
Middle Management	1.24	1.08	\$49.69	\$60.30	\$61.50
Junior Engineer/Technician	4.13	3.73	\$19.40	\$23.54	\$24.01
Senior Operator	13.81	13.1	\$31.29	\$37.97	\$38.72
3rd Party Licensed Professional Engineer	8	8	\$60.87	\$73.87	\$75.33

The resulting estimates of total reporting costs for all five refineries are listed in present values, based on year of expenditure, in Table 4. Unlike emissions reduction or efficiency technology or other measures, reporting costs are assumed to be spent in the reporting year.

**Table 4: Total Present-Value Reporting Costs by Year**

If All Five Plants Have Their Last Report in the Following Year	Reporting Costs
2014	\$6,389
2015	\$12,367
2016	\$18,171
2017	\$23,806
2018	\$29,277
2019	\$34,588
2020	\$39,745

If All Five Plants Have Their Last Report in the Following Year	Reporting Costs
2021	\$44,752
2022	\$49,613
2023	\$54,332
2024	\$58,914
2025	\$63,362

Recordkeeping costs: We estimated recordkeeping costs based on the EPA's past assumptions about the types of employees required for recordkeeping in GHG reporting, as well as the amounts of time those workers would require for the task.<sup>10</sup> These assumptions are summarized in Table 5, which also includes the associated wage by type of worker, and loading factors to account for overhead and current dollar values.<sup>11</sup> The loading factor accounts for 4.35 percent benefits loading, and seventeen percent overhead loading.<sup>12</sup>

**Table 5: Inputs to Recordkeeping Costs with Loading Factor**

	First year hours	Subsequent year hours	Wage 2012\$	Loaded wage 2012\$	Loaded wage 2013\$
Senior Management	0.15	0.15	\$51.76	\$62.81	\$64.06
Middle Management	0.24	0.23	\$49.69	\$60.30	\$61.50
Junior Engineer/Technician	2.74	2.6	\$19.40	\$23.54	\$24.01
Senior Operator	0.52	0.52	\$31.29	\$37.97	\$38.72

The resulting estimates of total recordkeeping costs for all five refineries are listed in present values, based on five years of expenditure following reported compliance, in Table 6.

Recordkeeping costs are assumed to be spent during the five years following the final report (of compliance with emissions or efficiency standards).

**Table 6: Total Present-Value Recordkeeping Costs by Year**

If All Five Plants Have Their Last Report in the Following Year	Recordkeeping Costs
2014	\$2,454

If All Five Plants Have Their Last Report in the Following Year	Recordkeeping Costs
2015	\$2,382
2016	\$2,313
2017	\$2,245
2018	\$2,180
2019	\$2,117
2020	\$2,055
2021	\$1,995
2022	\$1,937
2023	\$1,881
2024	\$1,826
2025	\$1,773

Section 3: Quantification of Cost Ratios:

While the proposed rule does impact businesses in an industry (five petroleum refineries), it does not affect small businesses. It is therefore impossible to compare the impacts of the proposed rule on small businesses to the impacts on the largest businesses. Consequently, we conclude that the rule does not have a disproportionate impact on small businesses.

Not affecting small businesses, however, does not make the proposed rule exempt from the preparation of an SBEIS, and we have completed all portions of the analysis required for this document.

Ecology determined that the parent companies that own the refineries to which the proposed rule applies are not small businesses as defined by chapter 19.85 RCW (employing fifty or fewer people). From firm annual reports and statements to the public and shareholders, ecology identified the approximate employment of the parent companies as:<sup>13</sup>

- BP: 85,700
- Phillips 66: 13,500
- Shell Oil: 87,000
- Tesoro: 5,700
- US Oil and Refining (Astra Transcor Energy): 350

Section 4: Actions Taken to Reduce the Impact of the Rule on Small Businesses: Ecology did not take any action to reduce the impact of the proposed rule on small businesses because the proposed rule does not have a disproportionate impact on small businesses.

Section 5: The Involvement of Small Businesses in the Development of the Proposed Rule: Ecology did not involve small businesses in the development of the proposed rule. Similarly, ecology did not involve local governments beyond the two local air agencies involved in the RACT determination and rule-making process.

Section 6: The Standard Industry Classification (SIC) Codes of Impacted Industries: The SIC system has long been replaced by the North American Industry Classification System (NAICS). The proposed rule specifically applies to five petroleum refineries in Washington state. All of these refineries are classified as NAICS code 32411, Petroleum Refineries.

Section 7: Impacts on Jobs: We used the Washington state 2002 OFM-IO to estimate the proposed rule's first round impact on jobs across the state. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry are entered in the OFM-IO model as a decrease in spending and investment.

We estimated that up to thirteen jobs, statewide over twenty years, are likely to be lost under the proposed rule, based on the overall highest possible present-value of compliance costs, occurring in the petroleum refining industry. This includes direct job losses in the petroleum refining industry, additional employment or utilization of existing petroleum refinery employees performing reporting and recordkeeping tasks, and transfer payments to licensed professional external engineers for report review.

Section 8: References:

Astra Transcor Energy (2013), "Our People" website as accessed November 2013, <http://www.astratranscor.com/en/our-people/our-people.aspx>.

Bureau of Labor Statistics, US (2013a). 2012 State Occupational Employment and Wage Estimates for Washington State.

Bureau of Labor Statistics, US (2013b). Consumer Price Index for 2012 and 2013.

BP (2013), 2012 Summary Review.

Environmental Protection Agency, US (2010). Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Under Subpart W Final Rule (GHG Reporting). November 2010.

Interagency Workgroup on Social Cost of Carbon, US Government (2010). Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis – Under Executive Order 12866. February 2010.

Interagency Workgroup on Social Cost of Carbon, US Government (2013). Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis – Under Executive Order 12866. May 2013.

NWCAA, PSCAA, Ecology (2013). Washington Oil Refinery RACT Final Technical Support Document. November 25, 2013. Ecology publication number 13-02-31.

Phillips 66 (2013), 2012 Summary Annual Report.

Royal Dutch Shell PLC (2013), Annual Report Royal Dutch Shell PLC Annual Report and For 20-F for the Year Ended December 31, 2012.

Securities & Exchange Commission, US (fiscal year 2012), Form 10-K for Tesoro Corporation.

- 1 The Solomon Associates proprietary petroleum refinery energy efficiency metric that compares actual energy consumption for a petroleum refinery with the standard energy consumption for a petroleum refinery of similar size. The standard energy consumption is based on an analysis of refining capacity as contained in the database maintained by Solomon Associates. The ratio of a facility's actual energy consumption to the standard energy consumption is multiplied by one hundred to arrive at the Solomon EII® for a refinery.
- 2 The proposed rule applies only to certain GHG emissions; carbon dioxide, nitrous oxide and methane. Carbon dioxide from combustion of fuels accounts for 90+ percent of the CO2-equivalent emissions.
- 3 NWCAA, PSCAA, Ecology (2013), Washington Oil Refinery RACT Technical Support Document.

- 4 For emissions calculation basis, see Washington Oil Refinery RACT Final Technical Support Document (NWCAA, PSCAA, Ecology; 2013), Table 6-1 and Table 6-2. A one percent reduction in total boiler emissions across all five refineries would have been 6,381 metric tons in 2010 (or an average of 1,276 per refinery). A reduction of 6,381 metric tons would have been a 0.101 percent reduction from total 2010 emissions of 6,307,590. For emissions-reduction cost basis, see Washington Oil Refinery RACT Final Technical Support Document (NWCAA, PSCAA, Ecology; 2013), Table 7-1. We limited the cost calculation to boiler options that had sufficient information to calculate the reduction-to-cost relationship range.
- 5 If one percent of boiler emissions is equivalent to 0.101 percent of total emissions, then one percent of total emissions is equivalent to 9.88 percent of boiler emissions. Therefore ten percent of total emissions is equivalent to 98.8 percent of boiler emissions.
- 6 98.8 multiplied by the cost range of \$90 - \$137 thousand per one percent reduction.
- 7 See Environmental Protection Agency (2010), Table 4-3.
- 8 See May, 2012 State Occupational Employment and Wage Estimates for Washington State (Bureau of Labor Statistics, 2013a). Wages updated to 2013-dollar values using the Consumer Price Index, as reported by the US BLS (2013b)
- 9 See Environmental Protection Agency (2010).
- 10 See Environmental Protection Agency (2010), Table 4-3.
- 11 See May, 2012 State Occupational Employment and Wage Estimates for Washington State (Bureau of Labor Statistics, 2013a). Wages updated to 2013-dollar values using the Consumer Price Index, as reported by the US BLS (2013b).
- 12 See Environmental Protection Agency (2010).
- 13 BP (2013), 2012 Summary Review; Phillips 66 (2013), 2012 Summary Annual Report; Royal Dutch Shell PLC (2013), Annual Report Royal Dutch Shell PLC Annual Report and For 20-F for the Year Ended December 31, 2012; US Securities & Exchange Commission (fiscal year 2012), Form 10-K for Tesoro Corporation; Astra Transcor Energy (2013), "Our People" web site as accessed November 2013, <http://www.astratranscor.com/en/our-people/our-people.aspx>.

A copy of the statement may be obtained by contacting Margo Thompson, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6827, fax (360) 407-7534, e-mail [margo.thompson@ecy.wa.gov](mailto:margo.thompson@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Margo Thompson, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6827, fax (360) 407-7534, e-mail [margo.thompson@ecy.wa.gov](mailto:margo.thompson@ecy.wa.gov).

December 15, 2013  
Polly Zehm  
Deputy Director

## Chapter 173-485 WAC

### PETROLEUM REFINERY GREENHOUSE GAS EMISSION REQUIREMENTS

#### NEW SECTION

**WAC 173-485-010 Policy and purpose.** The purpose of this rule is to determine reasonably available control technology for emissions of greenhouse gases emitted by petroleum refineries located in Washington state. The emission standards in this rule were developed under the requirements of RCW 70.94.154.

#### NEW SECTION

**WAC 173-485-020 Applicability.** (1) This chapter applies to all petroleum refineries in Washington state identified in WAC 173-485-030.

(2) All federal regulations referenced in this regulation are adopted as they exist on July 1, 2013.

#### NEW SECTION

**WAC 173-485-030 Definitions.** Definitions in chapter 173-400 WAC apply to this chapter. Definitions specific to this chapter include:

**"Baseline greenhouse gas emissions"** means greenhouse gas emissions, reported to the United States Environmental Protection Agency (EPA) to comply with 40 C.F.R. Part 98. The baseline greenhouse gas emissions are for calendar year 2010. If petroleum refinery operations during 2010 were not representative of typical refinery operations, then the petroleum refinery must use its 2011 emissions. Emissions must be provided in units of metric tons of CO<sub>2e</sub>. Emissions attributable to the production of electricity from on-site cogeneration equipment are not included in the baseline emissions. Emissions attributable to the production of steam by the cogeneration equipment are included in the baseline emissions.

**"Carbon dioxide equivalent"** or **"CO<sub>2e</sub>"** means the number of metric tons of carbon dioxide emissions with the same global warming potential as one metric ton of another greenhouse gas. CO<sub>2e</sub> is calculated using Equation A-1 of 40 C.F.R. Part 98.2 and the global warming potential values contained in Table A-1 of 40 C.F.R. Part 98, Subpart A.

**"Credit"** means the reduction of CO<sub>2e</sub> emitted resulting from one or more projects performed at a petroleum refinery during or prior to a reporting year. A credit is established according to WAC 173-485-060.

**"Energy efficiency standard"** means the EII® value representing the fiftieth percentile EII® of similar sized United States refineries, using the EPA EnergyStar® calculation methodology, which is based on the United States refineries participating in the EII® process in 2006.

**"Energy Intensity Index®"** or **"EII®"** means the Solomon Associates proprietary petroleum refinery energy efficiency metric that compares actual energy consumption for a petroleum refinery with the standard energy consumption for a petroleum refinery of similar size. The standard energy consumption is based on an analysis of refining capacity as contained in the data base maintained by Solomon Associates. The ratio of a facility's actual energy consumption to the standard energy consumption is multiplied by one hundred to arrive at the EII® for a refinery.

**"Greenhouse gases (GHGs)"** include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

**"Petroleum refinery"** or **"petroleum refineries"** means the following facilities, regardless of future changes in ownership or name:

- BP Cherry Point Refinery in Blaine, WA;
- Phillips 66 Company Refinery in Ferndale, WA;
- Shell Oil Company Refinery in Anacortes, WA;



(d) Tesoro Refining & Marketing Company, LLC Anacortes Refinery in Anacortes, WA; and

(e) U.S. Oil & Refining Co. Tacoma Refinery in Tacoma, WA.

"**RACT**" means reasonably available control technology.

"**Similar sized United States refineries**" means refineries determined to be of similar size using the petroleum refinery capacity categories established for EPA's EnergyStar® program.

"**Typical refinery operation**" means a calendar year during which the petroleum refinery experienced no planned turnaround projects or unplanned upsets to unit operations neither of which resulted in cessation of the processing of crude petroleum oil for more than thirty days.

#### NEW SECTION

**WAC 173-485-040 Greenhouse gas reasonably available control technology emission standard.** (1) **Energy efficiency standard.** The owner/operator of each petroleum refinery subject to this rule shall meet the requirement to use reasonably available control technology (RACT) for greenhouse gas emissions by demonstrating the petroleum refinery has a calculated EII® equal to or more efficient than the EII® value representing the fiftieth percentile EII® of similar sized United States refineries, based on 2006 data and the EPA EnergyStar® calculation methodology. The petroleum refinery must demonstrate compliance with WAC 173-485-050 in the annual report required in WAC 173-485-090 using any EII® report issued between 2006 and the first annual report. If a petroleum refinery is unable to or chooses not to demonstrate compliance with the energy efficiency standard in the first annual report required in WAC 173-485-090, the petroleum refinery shall document that it has met the requirements of subsection (2) of this section no later than October 1, 2025.

(2) **Emission reduction requirement.** A petroleum refinery that does not meet the requirements of subsection (1) of this section, must:

(a) No later than October 1, 2025, have implemented greenhouse gas reduction projects that:

(i) Result in cumulative annual emissions reduction(s) equivalent to ten percent of the facility's baseline greenhouse gas emissions (as CO<sub>2e</sub>); or

(ii) Result in the petroleum refinery meeting the energy efficiency standard in subsection (1) of this section.

(b) Demonstrate compliance with the emission reduction requirement in WAC 173-485-060.

#### NEW SECTION

**WAC 173-485-050 Demonstrating compliance with the energy efficiency standard.** (1) Owners/operators of a petroleum refinery demonstrating compliance with the energy efficiency standard shall as part of the annual report required in WAC 173-485-090(1) submit the following information:

(a) The letter from Solomon Associates certifying that the petroleum refinery has a calculated EII® for the refinery that meets the requirements in WAC 173-485-040(1);

(b) Identification of the calendar year of the petroleum refinery's operational data submitted to Solomon Associates to reach that conclusion. The calendar year used may be any year between 2006 through 2024; and

(c) Confirmation that the operational data submitted to Solomon Associates for these calculations were reviewed and certified by a professional engineer licensed in the state of Washington, including the date the operational data was certified and the name and license number of the professional engineer who made the certification.

(2) According to WAC 173-485-090, once this certification has been made, no additional annual reports are required.

#### NEW SECTION

**WAC 173-485-060 Demonstrating compliance with the emission reduction requirement.** (1) **Requesting credit.** Owners/operators of a petroleum refinery demonstrating compliance through the emission reduction requirement in WAC 173-485-040(2) shall submit, as part of each annual report required in WAC 173-485-090(1), requests for a credit against the greenhouse gas emission reduction requirement. A credit request must be based on specific projects that have been completed at the petroleum refinery since the previous annual report. Each request must include the following information:

(a) An engineering description and analysis of the project, including the emission reduction and energy efficiency objectives for the project.

(b) A quantitative analysis of the project documenting the annual metric tons of CO<sub>2e</sub> emission reductions achieved as a result of completing the project.

(c) Information supporting the quantitative analysis including engineering assumptions, measurements, or monitoring data.

(d) Requests for credits shall be submitted as part of the first annual report submitted after the petroleum refinery project has been completed.

(2) **Processing a credit request.**

(a) Each request for credit shall be reviewed and certified by a professional engineer licensed in the state of Washington. The certification must contain the name and license number of the professional engineer who performed the review and certified the submittal.

(b) Within thirty days after the receipt of a request for credit, the permitting authority may require the submission of additional information needed to review the request.

(c) Within thirty days after all required information has been received, the permitting authority shall propose to approve or deny the request for credit. Final approval or denial of a request shall be established through the issuance of a regulatory order. The regulatory order must be issued in accordance with the procedures of the permitting authority for issuing such orders. Each regulatory order issued to approve a request shall include both the quantity of greenhouse gas reduction credit awarded and any conditions necessary to support the validity of the credit award.

(3) Improvements in the efficiency of existing electrical equipment or electrical equipment upgrades are not eligible for credits.

(4) Greenhouse gas reductions for the replacement of direct fired or steam-driven equipment with electrical equipment will be credited based on the calculated difference between the greenhouse gas emissions reduced at the refinery and the greenhouse gas emissions calculated for the electricity required. The greenhouse gas emissions for electricity used will be the greenhouse gas emissions specific to the petroleum refinery's source of electricity.

(5) Greenhouse gas emission reductions at the petroleum refinery that occurred prior to January 1, 2010, are not eligible for credits.

#### NEW SECTION

**WAC 173-485-070 Monitoring.** (1) Each petroleum refinery must use monitoring measures that satisfy requirements for petroleum refinery owners/operators reporting greenhouse gas emissions to EPA under 40 C.F.R. Part 98. Unless additional monitoring is required by the credit order issued under WAC 173-485-060 (2)(c), the 40 C.F.R. Part 98 monitoring is considered sufficient for quantifying annual emissions for this regulation.

(2) The permitting authority may require additional monitoring, recordkeeping, and reporting to document compliance with a credit established through this regulation. The additional monitoring, recordkeeping, and reporting must be identified in the credit order issued under WAC 173-485-060 (2)(c).

#### NEW SECTION

**WAC 173-485-080 Recordkeeping.** (1) All records used for preparing submittals to Solomon Associates or for preparing reports to the permitting authority shall be retained at least five years beyond the date of the last annual report required by WAC 173-485-090(2).

(2) Records related to emission calculations and reports shall be provided to the permitting authority upon request. The petroleum refinery owner/operator retains the rights to keep specified records and information confidential as provided in RCW 70.94.205.

#### NEW SECTION

**WAC 173-485-090 Reporting.** (1) **Annual reports.** Starting on October 1, 2014, and by October 1 of each year until October 1, 2025, unless compliance has been demonstrated on an earlier date, the owners/operators of a petroleum refinery subject to this standard shall submit reports to their permitting authority that include the following information:

(a) Identification of the option the petroleum refinery intends to use to demonstrate compliance with this standard, including the baseline greenhouse gas emissions year the refinery has selected and justification to utilize that year.

(b) Activities completed since the last annual report to reduce greenhouse gas emissions.

(c) Any changes since the last annual report regarding the compliance option utilized by the petroleum refinery.

(d) Baseline greenhouse gas emissions for the petroleum refinery, actual greenhouse gas emissions for the previous calendar year, total greenhouse gas emission reductions

already credited to the petroleum refinery, and any emission reductions previously approved through regulatory order to comply with WAC 173-485-040(3), since the effective date of this regulation.

(e) All compliance documentation submittals required in WAC 173-485-050 or 173-485-060(1), as applicable.

(f) If the first annual report does not indicate compliance with the requirements in WAC 173-485-040, the first report must contain an overview plan of how the refinery intends to comply with the requirements of WAC 173-485-040.

(2) Annual reports must be submitted to the permitting authority until compliance has been demonstrated with either WAC 173-485-040 (2) or (3). The owner/operator of a petroleum refinery shall identify in the annual report that the report is the final report that will be submitted to the authority.