WSR 14-20-115
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Operations Support and Services Division)
(Language Testing and Certification Program)
[Filed October 1, 2014, 8:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-070.

Title of Rule and Other Identifying Information: Chapter 388-03 WAC, Certification of DSHS spoken language interpreters, translators, employees, and licensed agency personnel (LAPL).

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 November 25, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 26, 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 5:00 p.m., November 25, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, TTY (360) 664-6178, or (360) 664-6092, or e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- To reflect the changed name of the program;
- To implement agreements reached between OFM and WFSE/AFSCME;
- To specify and implement interpreter precertification training requirements;
- To specify and implement interpreter postcertification continuing education requirements; and
- To specify and implement interpreter decertification process and procedures.

All of the above are changes to existing chapter 388-03 WAC. Anticipated effects of the proposed changes include program operations that will conform to common industry standards and improved quality of certified interpreters/translators. The ultimate effect of the proposal is to improve the quality of interpreter services to the limited English proficient population.

Statutory Authority for Adoption: RCW 74.08.090; 45 C.F.R. Section 80.3 (b)(2); RCW 74.04.025; Civil Rights Act of 1964.

Statute Being Implemented: RCW 74.04.025.

Rule is necessary because of federal law, federal court decision, and state court decision: Civil Rights Act of 1964; *Reyes vs. Thompson* Consent Order (1991).

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

Name of Agency Personnel Responsible for Drafting: Hungling Fu, (360) 664-6035; Implementation and Enforcement: Maria Siguenza, (360) 664-6038.

No small business economic impact statement has been prepared under chapter 19.85 RCW. As explained in the cost-benefit analysis, the DSHS language testing and certification program has analyzed the existing rules and the proposed rule amendment and concludes that they will impose no costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Hungling Fu, 1115 Washington Street S.E., Olympia, WA 98501, phone (360) 664-6035, e-mail fuh@dshs.wa.gov.

September 22, 2014
Katherine I. Vasquez
Rules Coordinator

Chapter 388-03 WAC

((~~RULES AND REGULATIONS FOR THE~~)) CERTIFICATION OF DSHS SPOKEN LANGUAGE INTERPRETERS, ((~~AND~~)) TRANSLATORS, EMPLOYEES, AND LICENSED AGENCY PERSONNEL (LAPL)

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-010 What is the purpose of these rules? These rules:

(1) Establish the qualifications for department certified and ((~~qualified~~)) authorized interpreters, ((~~and~~)) translators, employees, and licensed agency personnel (LAPL); and

(2) Establish the requirements and procedures for administering and evaluating the department's interpreter, ((~~and~~)) translator, employee, and LAPL examinations.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-020 What is the scope of these rules? These rules apply to any person who:

(1) Seeks employment with the department as a bilingual employee;

(2) Wishes to provide services to the department as ((~~an~~)) a contracted interpreter or translator; or

(3) ((~~Provides department services to limited English proficient (LEP) clients~~)) Works for a non DSHS county agency/program that contracts with the department to provide services to the department's limited English proficient (LEP) clients, also known as licensed agency personnel (LAPL).

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-030 What definitions are important to understanding these rules? The following definitions are important to this chapter:

"Authorized interpreter ((~~or translator~~))" means a person who has ((~~been certified by a certification agency recognized by the department~~)) met the training and language examination requirements for screened languages.

"Certified/authorized bilingual employee" means a department employee who ((~~is certified, as bilingual, by passing~~)) has passed a department ((~~fluency~~)) bilingual employee examination ((~~or a department recognized professional association and is required to use their bilingual skills in their work~~)) in either a certified or a screened language.

"Certified interpreter ((~~for spoken languages~~))" means a person who has met the training requirements and has passed ((~~any~~)) one or both of the following ((~~fluency~~)) examinations:

(1) ((~~Department's~~)) The department's social services interpreter ((~~or medical interpreter~~)) certification examination in a certified language; or

(2) ((~~State of Washington office of the administrator for the courts interpreter certification examination;~~

~~(3) Federal courts interpreter certification examination~~)) The department's medical interpreter certification examination in a certified language.

"Certified languages for interpreters" means any of the languages listed under certified languages on the official LTC website and in the official LTC examination manual.

"Certified languages for translators" means any of the languages listed under certified languages on the official LTC website and in the official LTC examination manual.

"Certified translator ((~~for spoken languages~~))" means a person who has ((~~passed any of the following fluency examinations:~~

~~(1) Department's translator certification examination;~~

~~(2) American Translators Association (ATA) accreditation examination~~)) met the training requirements and has passed the department's translator certification examination in a certified language.

((**~~"Code of professional conduct for interpreters and translators"~~** ~~means department standards that must be met by all interpreters and translators when they provide language services to department programs and clients. Any violation of this code may disqualify an interpreter or translator from providing services to the department.~~))

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

"Employee" means a department bilingual employee whose position requires the use of bilingual skills as part of the job functions.

"Examination manual" means the language ((~~interpreter services and translations~~)) testing and certification section's professional language certification examination manual. To obtain a copy of this manual,((~~telephone or write the LIST office at:~~

~~Department of Social and Health Services~~
~~Language Interpreter Services and Translations~~
~~P.O. Box 45820~~
~~Olympia, WA 98504-5820~~
~~(360) 664-6037~~

~~Or visit the LIST web site at: http://asd.dshs.wa.gov/html/oar_list.htm~~)) visit the LTC website.

"Interpretation" means the ((~~oral or manual transfer of~~)) process of transferring a message orally from one language ((~~to~~)) into another ((~~language~~)).

"Language access provider" means, pursuant to RCW 41.56.030(10) and solely for the purpose of public employees' collective bargaining, any independent contractor who provides spoken language interpreter services for department of social and health services appointments or medicaid enrollee appointments.

"Language ((~~interpreter services and translations~~)) testing and certification (LTC)" ((~~or **"LIST"**~~)) means the section within the department that is responsible for ((~~administering and enforcing these rules and providing the services contained in this rule~~)) managing the bilingual skills testing and certification of employees, LAPL, and contracted interpreters and translators.

"Licensed agency personnel (LAPL)" means an employee of a county government agency/program that contracts with the department to provide services to department clients. Per the nature of services LAPL provide to department clients, they are treated as department position cluster 5 employees and are certified as such.

"Limited English proficient (LEP) client" means a person applying for or receiving department services, either directly or indirectly, who, because of a non-English speaking cultural background, cannot readily speak or understand the English language.

"Medical interpreter" means an interpreter who renders language interpretation services in a healthcare setting.

"Position cluster" means a group of DSHS jobs/positions that share the same or similar nature of job functions or responsibilities.

"Recognized interpreter" for spoken languages means a person who is certified by:

(1) The Washington state administrative office of the courts (AOC) as a court interpreter; or

(2) The administrative office of the United States courts as a federal court interpreter; or

(3) A non-profit organization that uses a credible certification program to certify professional interpreters and is recognized by the department; or

(4) Another state or U.S. territory or another country whose certification program is comparable to DSHS certification and based upon similar requirements.

"**Recognized translator**" for spoken languages means a person who is certified by:

(1) The American translators association (ATA); or

(2) A non-profit organization that uses a credible certification program to certify professional translators and is recognized by the department; or

(3) Another state or U.S. territory or another country whose certification program is comparable to DSHS certification and based upon similar requirements.

"**Screened language**" means any spoken language or any dialect within a spoken language that is not one of the certified languages.

"**Social service interpreter**" means an interpreter who renders language interpretation services in settings where human services programs are provided.

((**~~"Qualified interpreter for spoken languages"~~** ~~means a person:~~

~~(1) Who has passed a department bilingual fluency screening test in a language other than a department certified language; or~~

~~(2) Is authorized by the department pursuant to WAC 388-03-114 to interpret a language based on certification obtained from another state or country which is comparable to the certification process used by the department for its certified languages.~~))

"Source language" means the language from which an interpretation and/or translation is rendered.

"Target language" means the language into which an interpretation and/or translation is rendered.

"Translation" means the ((~~written transfer of a message~~)) process of transferring a written message from one language ((~~to~~)) into another.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-050 What is the department's ((")code of professional conduct for ((~~language interpreters and translators"~~)) interpreters, translators, employees, and LAPL? The ((")code of conduct((")) is the professional standard established by the department for all ((~~interpreters/translators providing~~)) interpreters, translators, employees, and LAPL who provide language services to department programs and clients. Any violation of this code may disqualify ((~~an interpreter or translator~~)) a provider from providing those services. Specifically, the code addresses:

(1) **Accuracy.** Interpreters/translators must always express the source language message in a thorough and faithful manner. They must:

(a) Omit or add nothing;

(b) Give consideration to linguistic variations in both the source and target languages; and

(c) Conserve the tone and spirit of the source language.

(2) **Cultural sensitivity-courtesy.** Interpreters/translators must be culturally-((~~knowledgeable,~~))sensitive, and respectful of the individual(s) they serve.

(3) **Confidentiality.** Interpreters/translators must not divulge any information publicly or privately obtained through their assignments, including, but not limited to, information ((~~from~~)) gained through access to documents or other written materials.

(4) ((~~**Disclosure.** Interpreters/translators must not publicly discuss, report, or offer an opinion on current or past assignments, even when the information related to the assignment is not legally considered confidential.~~

~~(5)~~)) **Proficiency.** Interpreters/translators must ((~~pass the department's required bilingual fluency certification examinations or screening tests in order to meet the department's~~)) meet the minimum proficiency standard set by DSHS.

(((~~6~~))) (5) **Compensation.** Interpreters/translators must:

(a) Not accept additional money, consideration, or favors for services reimbursed by the department ((~~through language services providers;~~)). The fee schedule agreed to between the contracted language services providers and the department shall be the maximum compensation accepted.

(b) Not use the department's time, facilities, equipment or supplies for private gain or other advantage; and

(c) Not use or attempt to use their position to secure privileges or exemptions.

(((~~7~~))) (6) **Nondiscrimination.** Interpreters/translators must:

(a) Always be ((~~neutral,~~)) impartial and unbiased;

(b) Not discriminate on the basis of gender, disability, race, color, national origin, age, ((~~creed, religion,~~)) socio-economic or educational or marital status, religious or political beliefs, or sexual orientation; and

(c) Refuse or withdraw from an assignment, without threat or retaliation, if they are unable to perform the required service in an ethical manner.

(((~~8~~))) (7) **((~~Self-evaluation~~)) Self-representation.** Interpreters/translators must accurately and completely represent their ((~~certification~~)) certifications, training, and experience.

(((~~9~~))) (8) **Impartiality-conflict of interest.** Interpreters/translators must disclose to the department any real or perceived conflicts of interest that would affect their professional objectivity. Note: Providing interpreting or translating services to family members or friends may violate the family member or friend's right to confidentiality, ((~~and/or may be a real or perceived~~)) constitute a conflict of interest, or violate a DSHS contract or subcontract.

(((~~10~~))) (9) **Professional demeanor.** Interpreters/translators must be punctual, prepared, and dressed ((~~appropriately~~)) in a manner appropriate, and not distracting for the situation.

(((~~11~~))) (10) **Scope of practice.** Interpreters/translators must not:

(a) Counsel, refer, give advice, or express personal opinions to ((~~their~~)) the individuals for whom they are interpreting/translating ((~~clients~~));

(b) Engage in activities with clients that are not directly related to providing interpreting and/or translating services;

(c) Have unsupervised ((~~contact with~~)) access to clients, including but not limited to phoning clients directly, other than at the request of a Washington State employee or contracted service provider (e.g., medical provider); ((~~and~~))

(d) ((~~Have direct telephone contact with clients unless requested by DSHS staff~~)) Market their services to clients, including but not limited to, arranging services or appointments for clients in order to create business for themselves; or

(e) Transport clients for any business, including social service or medical appointments.

(((~~12~~))) (11) **Reporting obstacles to practice.** Interpreters/translators must ((~~always~~)) assess at all times their ability to ((~~perform a specific interpreting/translating assignment. If they have any reservations about their ability to competently perform an assignment, they must immediately notify their clients and/or employer and offer to withdraw without threat or retaliation. They may remain on the assignment until more appropriate interpreters/translators can be retained~~)) interpret/translate.

(a) Interpreters/translators must immediately notify the parties if they have any reservations about their competency and offer to withdraw without threat or retaliation;

(b) Interpreters/translators must immediately withdraw from encounters they perceive as a violation of this code.

(((~~(13) **Ethical violations.** Interpreters/translators must immediately withdraw from assignments that they perceive are a violation of this code. Any violation of this code may disqualify them from providing services to the department.~~

~~(14)~~)) (12) **Professional development.** Interpreters/translators ((~~must~~)) are expected to continually develop their skills and knowledge through:

(a) ((~~Formal professional~~)) Professional interpreter/translator training;

(b) ((~~On-going continuing~~)) Continuing education; and

(c) Regular ((~~and frequent~~)) interaction with colleagues and specialists in related fields.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-060 What is the responsibility of the language ((~~interpreter services and translations (LIST)~~)) testing and certification (LTC) section in certifying ((~~spoken language interpreters and translators~~)) and authorizing interpreters, translators, employees, and LAPL? Language ((~~interpreter services and translations (LIST)~~)) testing and certification (LTC) is the section within DSHS responsible for:

(1) Establishing and publishing systems, methods, and procedures for certifying, screening and/or evaluating the interpretation and/or translation skills of ((~~bilingual~~)) employees, LAPL, interpreters and translators who work with department clients, employees, and service providers;

(2) Ensuring that certified/authorized ((~~or qualified bilingual~~)) interpreters, translators, employees, and LAPL ((~~and language service contractors~~)) are aware of DSHS's code of professional conduct for interpreters, ((~~and~~)) translator, employees, and LAPL;

(3) Overseeing that the test development process is empirically sound, the test instruments are valid and reliable, and the test administration procedures and test evaluation criteria are consistent with the standards established by the department;

(4) Coordinating and managing pre-certification/authorization training requirements, post-certification/authorization continuing education requirements, and coordinating the de-certification process for interpreters/translators; and

(5) Maintaining the online interpreter database for public access.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-110 What ((~~certification/qualification~~)) requirements apply to ((~~interpreters and translators~~)) persons providing language services to DSHS clients? (1) ((~~To be department certified, any~~)) Any department staff member serving in a bilingual capacity ((~~or any contracted interpreter/translator providing bilingual services to department clients~~)) must pass a bilingual ((~~fluency test~~)) skills examination. ((~~No bilingual duties will be assigned to any staff and no contract will be granted to any contractor without proper certification. Once certified:~~

~~(a) Department employees in positions requiring bilingual skills are eligible for assignment pay;~~

~~(b) Applicants for bilingual positions with the department qualify for those positions if they have also passed the applicable department of personnel employment examination; and~~

~~(c) Individuals not employed by the department who wish to interpret and/or translate for department clients can be retained by contracted interpreting agencies.~~))

(2) Any candidate seeking employment with the department in a position that requires bilingual skills must pass a bilingual skills examination.

(3) Any employee of a non DSHS county agency/program that contracts with the department to provide services to the department's limited English proficient (LEP) clients (also known as licensed agency personnel) must pass a bilingual skills examination.

(4) Any candidate wishing to provide language services to the department's LEP clients as a contracted interpreter or translator must meet the training requirements and pass a bilingual skills examination.

(5) Interpreters can be certified or ((~~qualified~~)) authorized by the department as:

(a) Social services interpreters ((~~by the department~~)); and/or

(b) ((~~Legal interpreters by the office of the administrator for the courts; and/or~~

~~(c)~~)) Medical interpreters ((~~by the department~~)).

(((~~(3)~~))) (6) Translators can be certified by the department ((~~or by the American Translators Association (ATA).~~

~~(4) When certified and/or qualified, interpreters and translators providing services to department programs and clients must comply with the department's code of professional conduct for interpreters and translators.~~

~~(5) Any violation of the code of professional conduct may disqualify an interpreter or translator from providing services to the department, regardless of whether their contract is directly with the department or indirectly through a language agency serving department clients.~~)) in any of the certified languages.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-112 When ((~~do~~)) am I ((~~become a~~)) considered certified or ((~~qualified interpreter or translator~~)) authorized? (((~~(1) For certified languages, you are considered certified once you pass the required tests.~~

~~(2) The effective dates of your certifications are the dates shown on your score report letters.~~

~~(3) If necessary, you can use your score report letters to verify your certification status.~~

~~(4) Your certificates will be mailed to you within a month from the date you pass all examination requirements. It is your responsibility to:~~

~~(a) Inform the LIST section of any change of name and address;~~

~~(b) Check the accuracy of the information presented on your certificate; and~~

~~(c) Contact the LIST section if your certificate is not received within the normal time period.~~

~~(5) For screening languages, you are considered qualified once you pass both the written and oral tests. Instead of a certificate, an authorization letter will be issued to qualified interpreters who pass the required screening tests.~~))

(1) For department employees, candidates for bilingual positions, and LAPL, you are considered certified or authorized once you have passed the required bilingual skills examination for your position cluster. Information regarding position clusters and their respective required examination can be found on the DSHS HRD website.

(2) For medical and social service interpreters in certified languages, you are considered certified once you have taken the required two-hour minimum DSHS interpreter/translator orientation training and the required two-hour minimum interpreter/translator professional ethics training, and you have passed the required written and oral examination for interpreters. If you pass the required examination before you complete the required trainings, your certificate will not be issued to you until you complete the required trainings.

(3) For medical and social service interpreters in screened languages, you are considered authorized once you have taken the required two-hour minimum DSHS interpreter/translator orientation training and the required two-hour minimum interpreter/translator professional ethics training, and you have passed the required written and oral examination. Instead of a certificate, an authorization letter will be issued to you. If you pass the required examination before you complete the required trainings, your authorization letter will not be issued to you until you complete the required trainings.

(4) For document translators in certified languages, you are considered certified once you have taken the required two-hour minimum DSHS interpreter/translator orientation training and the required two-hour minimum interpreter/translator professional ethics training, and you have passed the required document translation examination for translators. If you pass the required examination before you complete the required trainings, your certificate will not be issued to you until you complete the required trainings.

(5) Your certificate/authorization letter will be mailed to you within a month from the date you complete your required trainings and pass all examination requirements, whichever is later. It is your responsibility to:

(a) Check the accuracy of the information presented on your certificate/authorization letter;

(b) Inform the LTC section of any change of your name, phone number, e-mail address, or mailing address;

(c) Request any name change in writing with a copy of a court document attesting to the name change; and

(d) Contact the LTC section if your certificate/authorization letter is not received within the normal time frame.

(6) Your certification/authorization status may be denied/revoked if it is proven that you have committed any of the acts listed in 388-03-170.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-114 Can I ((~~become a department certified interpreter or translator~~)) provide language services to DSHS without taking a department examination? There are ((~~three~~)) four ways that you may gain department recognition as an interpreter or translator without taking the department's certification examinations.

(1) If you ((~~hold either a state of~~)) are certified as an interpreter by either the Washington state administrative office of the ((~~administrator for the~~)) courts ((~~interpreter certificate or a federal court interpreter certificate~~)) or the Administrative Office of the United States Courts, the department will recognize you as a ((~~certified~~)) social services interpreter without requiring you to take its social service interpreter examination. However, you must formally submit a written request for recognition, ((~~and attach~~)) a photocopy of your valid official certificate, and a copy of official record attesting to your completion of the required minimum DSHS interpreter/translator orientation and interpreter/translator professional ethics trainings to the entity you contract with for your language services.

(2) If you are certified as a translator by the American Translators Association (ATA) ((~~accredits you as a certified translator~~)), the department will recognize you as a ((~~certified~~)) translator without requiring you to take its translator examination. However, you must formally submit a written request for recognition, ((~~and attach~~)) a photocopy of your valid official certificate, and a copy of official record attesting to your completion of the required minimum DSHS interpreter/translator orientation and interpreter/translator professional ethics trainings to the entity you contract with for your language services.

(3) If you ((~~hold either an interpreter or translator certification from~~)) are certified as an interpreter or translator by another state or U.S. territory or another country that is comparable to DSHS certification and based upon similar requirements, ((~~LIST~~)) the department may recognize your certification. In your written request for DSHS recognition, you must submit a photocopy of your valid official certificate and a copy of the official ((~~test~~)) examination manual containing descriptions of the test development process, the scope of the examination, the knowledge and skills to be evaluated, the test validation approach and related statistics, the evaluation criteria, and the passing benchmark. Your request ((~~should~~)) must be submitted to ((~~LIST~~)) LTC. ((~~LIST~~)) LTC will ((~~decide~~)) evaluate all requests on a case-by-case basis. If LTC determines that your certification meets DSHS certification requirements, a recognition letter will be issued to you, which you will submit with your written request and a copy of your valid official certificate, and a copy of the official record attesting to your completion of the required minimum DSHS interpreter/translator orientation and interpreter/translator professional ethics trainings to the entity you contract with for your language services.

(4) If you are certified as an interpreter or translator by a non-profit organization that uses a credible certification program and is recognized by the department, the department may recognize your certification. In your written request for DSHS recognition, you must submit a photocopy of your

valid official certificate and a copy of the official examination manual containing descriptions of the test development process, the scope of the examination, the knowledge and skills to be evaluated, the test validation approach and related statistics, the evaluation criteria, and the passing benchmark. Your request must be submitted to LTC. LTC will evaluate all requests on a case-by-case basis. If LTC determines that your certification meets DSHS certification requirements, a recognition letter will be issued to you, which you will submit with your written request and a copy of your valid official certificate, and a copy of official record attesting to your completion of the required minimum DSHS interpreter/translator orientation and interpreter/translator professional ethics trainings to the entity you contract with for your language services.

(5) DSHS does not recognize any academic interpreter/translator degrees/certificates or training courses as substitutes for its certification/authorization examination requirements.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-115 Who determines if my request for examination exemption is "sufficiently documented"? The department determines if your request is sufficiently documented (except for WAC 388-03-114(1) and 388-03-114(2)). It may request further proof of your qualification. In all cases, the department's decision regarding the sufficiency of your documentation is final.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-116 What if ((~~the~~)) my certification documents ((~~requested by the language interpreter services and translations section~~)) are in a foreign language? (1) All documents submitted to ((~~LIST~~)) LTC in a foreign language must be accompanied by an accurate translation ((~~in~~)) into English by a qualified translator other than the holder of the certificate.

(2) Each translated document must bear the affidavit of the translator, sworn to before a notary public, certifying that the:

(a) Translator is competent in both the language of the document and the English language; and

(b) Translation is ((~~a true~~)) an accurate and complete translation of the foreign language original.

(3) Applicants must pay all costs related to translating any documents relevant to their request for department ((~~certification~~)) recognition.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-117 What happens to my request for department recognition as an ((~~interpreter or translator~~)) interpreter/translator? When ((~~LIST~~)) LTC receives your written request for recognition and the required documentation of your qualification, it will:

(1) Process your request as expeditiously as possible; and

(2) ((~~Give~~)) If approved, issue you ((~~written notification of its decision; and~~)) a letter of recognition; or

(3) ((~~File your request and enter your name, if your request is approved, into its electronic data base of authorized interpreters and translators~~)) If not approved, issue you a letter explaining the reason why your request was not approved.

(4) These procedures do not apply to WAC 388-03-114 (1) and 388-03-114(2).

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-118 Does the department maintain lists of certified/((~~qualified~~)) authorized interpreters and translators? (1) To enable contracted ((~~language~~)) agencies and department programs to locate and contact certified and/or ((~~qualified~~)) authorized interpreters and translators, the department maintains lists of certified interpreters, certified translators, and ((~~qualified~~)) authorized interpreters.

(2) These lists are published and ((~~distributed to department contracted language agencies, local department offices, LEP cluster coordinators and regional LEP coordinators~~)) updated regularly to include newly certified and authorized interpreters/translators.

(3) Any interpreter or translator who considers ((~~some~~)) certain information on the list to be confidential, such as ((~~mailing addresses~~)) physical address and telephone numbers, can request to have ((~~that~~)) such information removed ((~~by writing the Language Interpreter Services and Translations section at: P.O. Box 45820, Olympia, WA 98504-5820~~)). The request must be made in writing and mail or email it to LTC. However, LTC will provide details regarding interpreters to the extent required by RCW 41.56.510(4).

(4) ((~~These lists are updated quarterly to include newly certified and qualified interpreters/translators~~)) Only contracted interpreters and translators are included on these lists. There is no public access to the lists of department bilingual employees or LAPL.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-120 Who can take the department's interpreter/translator certification and screening examinations? (1) You are eligible to take any DSHS interpreter/translator certification or screening examination if you are eighteen years of age or older and:

(a) Currently employed by DSHS in a bilingual position; or

(b) Applying for DSHS positions with bilingual requirements; or

(c) Currently working ((~~with DSHS programs~~)) through contracted ((~~language~~)) agencies as a social service and/or medical interpreter; or

(d) Wishing to work ((~~with DSHS programs~~)) through contracted ((~~language~~)) agencies as a social service and/or medical interpreter, or a translator.

(2) There are no formal education and experience requirements for taking an examination. ((~~If you fit into one~~

~~of the above listed categories, you are eligible to take an examination.~~)) However, you must remember that all written and oral tests administered by the department assess language proficiency at a professional interpreter/translator level. The reading level of all tests is at or above grade fourteen, depending on the type of test. Taking some professional hands-on training related to language interpretation/translation prior to taking the test may help you be better prepared for the test.

(3) Screening tests will not substitute for or be substituted ((~~for~~)) by any ((~~certificated~~)) certified language tests.

(4) LTC provides reasonable accommodations for individuals who have one or more documented disabilities within the meaning of the Americans with Disabilities Act (ADA) of 1990 and/or Washington's law against discrimination (WLAD). If you have a documented disability covered under the ADA and/or WLAD and require test accommodations, you must:

(a) Submit a copy of a qualified medical professional's statement specifying your disability and the specific accommodation required in completing a paper-and-pencil written test and an oral test using audio materials; and

(b) In the Special Instructions box of the test sign-up form, specify your special needs such as special equipment or the amount of extra time required in completing any of the tests. LTC will request and verify supporting documents for your special accommodation. The appointment date and time you selected through online scheduling may need to be adjusted or rescheduled depending on what is required to accommodate your situation.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-122 What type of test is given by the department to certify and ((~~qualify interpreters and translators~~)) authorize persons providing language services to DSHS clients? (1) Certification examinations evaluate bilingual proficiency and ((~~interpreting~~)) interpretation/translation skills by comparing your proficiency and ((~~skill~~)) skills to minimum competency standards.

(2) Minimum competency standards are determined by the nature of the work involved and by experienced practicing ((~~court~~)) interpreters/translators, ((~~social services interpreters/translators,~~)) bilingual professionals, and language specialists.

(3) Five different types of tests are used to evaluate the bilingual proficiency and ((~~interpreting~~)) interpretation/translation skills of the following categories of people:

(a) Department employees and ((~~new recruits~~)) employment candidates with bilingual assignments (employee test);

(b) ((~~Contracted~~)) Social services interpreters providing oral interpretation services to department social service programs (social services interpreter test);

(c) ((~~Contracted translators~~)) Translators providing written document translation services to department social service programs (translator test);

(d) Medical interpreters providing interpretation services to department clients in medical settings (medical interpreter test); and

(e) Licensed agency personnel (LAPL) whose agency is providing contracted services to the department (((~~licensed agency personnel test or LAP~~)) LAPL test).

(4) For a list of the specific types of examinations and languages tested (and other important testing information), see the most recent edition of the "professional language certification examination manual" published ((~~by the language interpreter services and translations section~~)) on the LTC website.

(5) Examinations for interpreters include written and oral components. ((~~Interpreters must pass the written test before they take the oral test~~)) To satisfy testing requirements, an interpreter must pass both the written and oral test components.

(6) Examinations for ((~~DSHS bilingual~~)) employees and LAPL usually include written and oral components and these can be taken on the same day if the test schedule allows it.

(7) Examinations for translators include only a written document translation component.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-123 What is a screening ((~~test~~)) examination? (1) A screening ((~~test~~)) examination is ((~~a test~~)) an examination administered by the department to candidates who wish to become "((~~qualified~~)) authorized interpreters." ((~~Qualified~~)) Authorized interpreters((~~, also referred to as noncertificated language interpreters,~~)) are individuals who speak a language ((~~other than the department's seven certificated languages, which are Cambodian, Chinese (either Cantonese or Mandarin), Korean, Laotian, Russian, Spanish and Vietnamese~~)) or a dialect within a language that is not one of the certified languages.

(2) The scope of a screening ((~~test~~)) examination is narrower than ((~~the scope~~)) that of a ((~~certificated~~)) certified language examination. Screening ((~~tests~~)) examinations assess a candidate's English and target language skills but the broader, more comprehensive type of assessment used ((~~in a certificated language~~)) for certified languages examination is not possible ((~~because of~~)) due to limited department resources.

(3) Screening ((~~tests~~)) examinations are only available for social services interpreters and medical interpreters.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-125 How do I register for a certification or screening examination if I am not a department employee or an applicant for a bilingual position with the department? ((~~To register for a certification or screening examination you must follow these steps~~)) You must do the following:

(1) ((~~Call the LIST office and request a copy of the examination manual, an examination application form and a schedule of upcoming test dates~~)) Read the examination manual and other related information on the LTC website. The LTC website can be accessed from any private or public computer with internet access.

(2) ((~~Complete and return the examination application form with the required examination fee~~)) Follow the instruc-

tions on the LTC website to register for a test of your choice online. You need to have a valid email address and a valid credit card or debit card to register for a test.

(3) ((~~Wait to receive your examination confirmation letter and~~)) You will receive an email appointment confirmation instantaneously after you complete the online test registration process. You can access the pretest study package from ((~~LIST~~)) the LTC website. If you ((~~have~~)) did not ((~~received your letter and package within fifteen working days after you mailed your application and payment~~)) receive your test confirmation email a few minutes after you completed the registration process, it is your responsibility to contact the ((~~LIST~~)) LTC office. ((~~It is also your responsibility to inform LIST if your name, mailing address or telephone number changes.~~))

(4) If you are only registering for the oral test or registering to retake a test, you do not need to call the ((~~LIST~~)) LTC office. Simply ((~~complete the application form enclosed with your test score report letter and return it to LIST with the appropriate fee. A confirmation letter will be mailed to you when LIST receives your application and payment~~)) follow the steps in subsections (2) and (3) of this section.

(5) Walk-in registration at a test site is not allowed under any circumstances.

(6) Telephone registration is allowed only for department employees, ((~~and~~)) applicants for department bilingual positions, and LAPL.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-126 What does ((~~my~~)) the pretest package contain? ((~~Your~~)) The pretest study package contains ((~~directions to the testing site and~~)) a study guide that includes sample test questions, sample oral exercises, a list of important terminology and ((~~a copy of~~)) the department's code of professional conduct.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-130 What examination fees must I pay? ((~~The following examination fees apply to all languages tested by LIST:~~)) Examination fees are listed in the examination manual on the LTC website.

((**~~Testing for certificated languages~~**:

~~Social services interpreter test~~	
~~Written test~~	~~$30.00 per attempt~~
~~Oral test~~	~~$45.00 per attempt~~
~~Simultaneous test (retake only)~~	~~$25.00 per attempt~~
~~Medical interpreter test~~	
~~Written test~~	~~$30.00 per attempt~~
~~Oral test~~	~~$45.00 per attempt~~
~~Translator test~~	
~~Written test~~	~~$50.00 per attempt~~

~~Screening for noncertificated languages~~:

~~Social services or medical~~	
~~Written screening~~	~~$30.00 per attempt~~
~~Oral screening~~	~~$45.00 per attempt, per language~~))

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-132 How do I pay my examination fees? (((~~1~~))) You may pay your examination fees with ((~~a personal check, certified check, cashier check or money order made out to the "department of social and health services." Do not send cash. LIST will not be responsible for lost cash payments sent through the mail.~~

~~(2) If your check or money order is for the wrong amount, LIST will return your payment and your application. You will have to resubmit your application with a correctly prepared check or money order.~~

~~(3) If your bank returns your personal check to LIST because of insufficient funds, LIST will not send you a score report letter until your check clears the bank.~~)) a credit card or debit card when you register from the LTC website.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-133 Are my examination fees refundable? (1) ((~~All examination~~)) Examination fees are nonrefundable except in the following circumstances:

(a) If ((~~you die~~)) an applicant dies before taking the examination, ((~~your~~)) their examination fees are refundable to ((~~your~~)) their estate; or

(b) If you officially move out of Washington state before taking the examination, your examination fees can be refunded to you upon request.

(2) If you fail to attend your confirmed test session(s) because of an emergency, your test session(s) may be rescheduled upon request but your test fee will not be refunded. ((~~A rescheduling~~)) Rescheduling due to an emergency will be done only once and only if the emergency is properly documented. Examples of proper documentation ((~~would be~~)) include an official police ((~~reports~~)) report or a signed physician ((~~statements~~)) statement.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-135 ((~~What requirements apply to the scheduling of interpreter and translator certification and screening examinations~~)) Where are the test locations and how frequent are the test sessions? (1) ((~~LIST schedules all department interpreter and translator examinations.~~)) Normally, testing for all languages is conducted ((~~once a month, statewide, from February through November. No testing is offered in December and January due to potential hazardous driving conditions. (See the examination manual for details.)~~

~~(2) If you require special arrangements for taking your test due to a disability, you should indicate this special need during your initial contact with LIST.~~

~~(3) LIST testing is currently offered at six statewide locations. (See the examination manual for details.) Testing site~~)) in Eastern and Western Washington. The number of test locations and the frequency of test sessions are determined on the basis of budgetary allotment for the testing program.

(2) Test locations can change because of scheduling factors and varying demand for testing services. ((~~To stay informed, you should regularly consult LIST's master test schedule. Also, carefully~~)) Carefully read your test confirmation letter because it contains specific information on test date, test time, and test location. Current test locations and driving directions to test locations are always published on the LTC website.

(((~~(4) You must attend the test session(s) indicated in your registration confirmation letters. Except in bona fide emergency situations (see WAC 388-03-133(2)), you will not be allowed to reschedule your examination if you fail to attend your assigned test session(s). If you miss your scheduled examination for reasons other than an emergency, you may schedule another examination by reapplying to take the test and paying the appropriate testing fee.~~

~~(5) All requests for a change in testing schedule must be made within ten calendar days from the date your confirmation letter is sent; otherwise LIST considers your test appointment "confirmed" and your examination fees will not be refunded.~~))

NEW SECTION

WAC 388-03-136 Can I change my test appointment date and time? (1) You may request a change in your test appointment date and time only if the request is made within ten calendar days from the date your confirmation letter is sent; otherwise LTC considers your test appointment "confirmed" and your examination fees will not be refunded.

(2) Except in bona fide emergency situations (see WAC 388-03-133(2)), you will not be allowed to re-schedule your appointment free of charge if you fail to attend your confirmed test appointment. If you miss your confirmed test appointment for reasons other than an emergency, you may schedule another appointment date and time by paying the appropriate examination fee.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-138 What procedural requirements apply to administering certification and screening examinations? (1) The department has a "no-comment, no-return" examination policy. Once an examination is given, it becomes the property of the department and it will not be released to anyone, including test candidates. Such property includes the test booklet, answer sheets, oral test recordings, test grading sheets, and notes taken by the candidate.

(2) The department will not discuss specific examination content, including specific test questions or answers, with test candidates or any other party. Candidates can receive general critiques of their test performance if they submit a written request.

(3) Passing scores for the different examinations are established by the department based on bilingual fluency required by law, testing technicalities and the language needs of the department. Test scores will only be reported to candidates in writing. No score information will be released over the telephone to anyone, including the test candidate.

(4) All interpreter and translator candidates must follow ((~~the~~)) test instructions. ((~~A failure~~)) Failure to follow ((~~the~~)) test instructions may result in an invalid test. Invalid tests will not be scored and, therefore, no test results will be reported to the candidate.

(5) If a candidate arrives late for the written test but decides to ((~~go ahead and take it, they~~)) proceed with taking the test, the candidate will take the test during the remaining time allowed. The lost time resulting from their late arrival will not be made up in additional testing time.

(6) If a candidate arrives late for an oral test, they may lose their ((~~assigned~~)) confirmed time slot. A lost time slot resulting from a late arrival will not be made up.

(7) Tests will not be rescheduled because a candidate arrives late at a testing site except in the case of a bona fide emergency. If you are too late to take the test for some reason other than an emergency, you may ((~~schedule~~)) register for another examination by ((~~reapplying for the test and~~)) paying ((~~the appropriate~~)) another test fee.

(8) No electronic devices such as laptops, tablets, electronic dictionaries, smart phones, cell phones are allowed during the written and oral test.

(9) No reference materials of any kind will be allowed during the written and oral tests. However, hard copy dictionaries are allowed for the document translator examination.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-140 What if a test candidate is suspected of cheating? If a test administrator ((~~suspects cheating during an examination~~)) concludes with reasonable evidence that a candidate cheated during an examination, the accused candidate may be declared ineligible indefinitely for all interpreter and translator certification/((~~qualification~~)) authorization tests administered by the department. You will be notified in writing about the department's decision.

NEW SECTION

WAC 388-03-142 Can I appeal the decision about my ineligibility to take any DSHS test because of cheating? If you are notified that you are ineligible to take any DSHS test because of cheating, you have the right to appeal the decision by using the adjudicative proceeding process in chapter 34.05 RCW and chapter 388-02 WAC.

NEW SECTION

WAC 388-03-144 How do I request an adjudicative hearing about the department's decision to declare me ineligible due to cheating? To request an adjudicative hearing, you must:

(1) File a written application for hearing with the department's board of appeals within twenty-one days of receiving the department's decision to deny you from taking any DSHS test.

(2) Your written application must include:

(a) A copy of the decision that you are contesting; and

(b) A specific statement of the issue(s) and the law involved; and

(c) Your reasons for contesting the decision.

(3) Your written application for hearing must be delivered to the board of appeals in person, electronically by fax or by certified mail. (See WAC 388-02-0030.)

(4) Once the board of appeals receives your written application, an adjudicative hearing will be scheduled.

(5) The adjudicative hearing will be governed by the provisions of chapter 34.05 RCW and chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-150 How does the department score my bilingual examinations? (1) Depending on the nature of the test or test section, the department uses either an objective or a holistic scoring method to evaluate your examination.

(2) Please consult the examination manual for the evaluation indicators used by the department for each test or subtest.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-152 When does the department mail my test scores? Score report letters will be sent to candidates when they finish either portion (written or oral) of the test:

(1) For ((~~a~~)) an interpreter written test, your scores should be available within two to four weeks from the date you took the examination.

(2) For ((~~oral tests, you should receive your scores within four to six weeks from the date you took the examination~~)) an interpreter, employee, or LAPL oral test, your scores should be available within four to six weeks from the date you took the examination.

(3) For an employee or LAPL written test and a document translator test, your scores should be available within four to six weeks from the date you took the examination.

(((~~3~~))) (4) If you wish your test scores mailed to a specific organization or individual, you must personally notify the department in writing (signature required) and provide the name and mailing address of the organization or individual to whom your score should be sent.

(((~~4~~))) (5) If you do not receive your score report ((~~letters~~)) letter within the suggested time ((~~periods~~)) period, you should contact ((~~LIST at (360) 664-6037~~)) LTC via email. The LTC email address can be found on the LTC website.

NEW SECTION

WAC 388-03-153 I have passed my interpreter written test. How long is my written test score valid before I take my oral test? If passed, your written test score is valid for two years from the date of your score report letter. If it has been more than two years since you passed your interpreter written test, you need to re-take the written test and pass it before it can be applied toward your certification/authorization status.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-154 Can I appeal my test scores? You have two months, from the date your test score letter is sent, to appeal your test score. Note:

(1) Your appeal must be submitted to the ((~~department~~)) department's LTC program manager in writing.

(2) Your appeal will not be honored if it is filed beyond the two-month appeal period.

(3) You will not be allowed to reschedule an examination while your score is being appealed.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-156 How many times can I retake a failed test? You can retake a failed examination until you pass it. ((~~However, if you fail a test three times, you must wait six months before taking it a fourth time and wait six months between each subsequent attempt.~~)) Each time you retake the test you must pay an examination fee (except for DSHS bilingual staff tests).

NEW SECTION

WAC 388-03-160 How do I maintain my certification or authorization status? (1) If you have been certified or authorized as a department bilingual employee or LAPL, your status does not expire as long as you remain in a designated bilingual position within the position cluster for which you were certified/authorized. Otherwise:

(a) If you moved out of a designated bilingual position and do not use your bilingual skills for four consecutive years or longer, you need to re-test for the position cluster you are re-entering; or

(b) If you are moving into a new designated bilingual position within a new position cluster, you need to meet the test requirements for the position cluster you are entering.

(2) If you have been certified or authorized as an interpreter or translator and are not a department employee, you can maintain your certification or authorization status by:

(a) Earning a minimum of twenty credit hours of DSHS approved continuing education (CE) every four years. A current list of DSHS recognized continuing education and/or professional development courses is published on the LTC website; or

(b) Retake the examination within four years from the date your were certified/authorized if you do not earn a minimum of twenty credit hours of DSHS recognized continuing education during this time frame. Once you pass all test requirements, a new certificate or authorization letter will be issued to you with a new expiration date. Your name and contact information will then be included for publication.

NEW SECTION

WAC 388-03-162 How does the department keep track of my continuing education credit hours? Before your certification or authorization status expires, you need to send a written request to LTC to renew your certification or authorization status. In your written request, you must include a photo copy of your official transcript or certificate of completion that specifies the date, the content, and the number of credit hours earned in a particular class/course/training activity. You should only report DSHS approved CE credits. The information you send us will be verified before it is recorded in determining the renewal of your certification or authorization status. Once renewed, a new certificate or authorization letter will be issued to you with a new expiration date. Your name and contact information will then be included for publication.

NEW SECTION

WAC 388-03-164 What happens if I do not meet the requirements for maintaining my certification or authorization status? If you do not meet the requirements as specified under 388-03-160, your certification or authorization status will expire after the expiration date on your certificate or authorization letter. Your name will be removed from the list of certified or authorized interpreters/translators. Once your certification or authorization status has expired, you must meet all requirements specified under WAC 388-03-112 before it can be renewed.

NEW SECTION

WAC 388-03-166 What about certificates/authorization letters issued prior to the effective date of the revised chapter 388-03 WAC? Section 388-03-160 applies to all certified/authorized/recognized interpreters/translators, regardless of when their certificates/authorization letters were issued. The expiration date for certificates/authorization letters is four years from the effective date of the revised Chapter 388-03 WAC if the requirement of WAC 388-03-160 is not met.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-170 Can the department deny or revoke my certification or ((~~qualification~~)) authorization status? The department may deny or revoke either your certification or ((~~qualification~~)) authorization status if it is proven by the authorized entity or the entity that contracts with you that you committed ((~~one or both~~)) any of the following acts:

(1) You have not been truthful when dealing with the department; or

(2) You have violated any provision of the department's code of professional conduct that is determined to be creating major negative impacts on the department or the profession; or

(3) You have committed any act that constitutes a felony or misdemeanor related to your DSHS language service assignments; or

(4) You have committed any fraud, dishonesty, or corruption related to your DSHS language service assignments; or

(5) You continued to violate any provision of the department's code of professional conduct after receipt of notification to discontinue; or

(6) You continued to falsely or deceptively advertise your language service after receipt of notification to discontinue; or

(7) It is determined that you are grossly incompetent as a language access provider.

Alternatively, if the department determines that you engaged in misconduct but that the misconduct is not one of the acts described above, the department will alert you to your misconduct and notify you to discontinue such misconduct.

Once you have been de-certified/de-authorized due to any of the proven acts listed above, you will be ineligible indefinitely for re-certification/re-authorization.

NEW SECTION

WAC 388-03-171 Can the department deny or revoke my certification or authorization status as a department bilingual employee? The department may deny or revoke either your certification or authorization status if it is proven that you committed any of the acts listed in WAC 388-03-170. Revocation request for a department bilingual employee must be filed with LTC by the human resources division (HRD).

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-172 What procedures must the department follow if it denies or revokes my certification or ((~~qualification~~)) authorization status? If it is alleged that you have ((~~not been truthful when dealing with the department or that you have violated the department's code of professional conduct, the department,~~)) committed any of the acts listed in WAC 388-03-170, before denying or revoking your certification or ((~~qualification,~~)) authorization status, the department must:

(1) have received an official request from the entity that contracts with you to have your certification/authorization status revoked;

(2) ((~~Immediately investigate the allegations made against you~~)) Have received the findings of the investigation conducted by the authorized entity or the entity that contracts with you. You must be interviewed as part of the investigation process. The findings of the investigation must include definite conclusions about the alleged violation(s); ((~~and~~))

(((~~(2) Within sixty days of receiving the allegation, determine if you committed the alleged violations; and~~)))

(3) Within ((~~five~~)) thirty days of ((~~reaching its decision, give~~)) receiving the official revocation request and investigation findings, send you written notification ((~~of~~)) regarding the final decision of your certification or authorization status.

The department's notification must be ((~~delivered~~)) sent to you by certified mail; and

(4) Remove your name from the department's database and the published online searchable list of certified/authorized interpreters/translators, if your certification/authorization status has been revoked.

(5) If a revocation request is made by a third party while an investigation of an allegation is not feasible, the department retains the right and authority to deny or revoke a certification or authorization status without an investigation.

NEW SECTION

WAC 388-03-173 What is the required time frame to file a revocation request? Any request for revocation must be officially filed with LTC within two years of the alleged occurrence of misconduct. Otherwise, the request shall be dismissed as untimely.

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-174 Can I appeal the ((~~department's~~)) decision to deny or revoke my certification or ((~~qualification~~)) authorization? If ((~~the department denies or revokes~~)) your certification or ((~~qualification~~)) authorization is denied or revoked, you have the right to appeal ((~~its~~)) the decision by using the adjudicative proceeding process in chapter 34.05 RCW and chapter ((~~388-08~~)) 388-02 WAC. ((~~However, the department encourages you to first try to resolve your dispute through a less formal process like mediation.~~))

AMENDATORY SECTION (Amending WSR 00-06-014, filed 2/22/00, effective 3/24/00)

WAC 388-03-176 How do I request an adjudicative hearing? To request an adjudicative hearing, you must:

(1) File a written application for hearing with the department's board of appeals within twenty-one days of receiving the department's decision to deny or revoke your certification or ((~~qualification~~)) authorization.

(2) Your written application must include:

(a) A copy of the ((~~department's~~)) decision that you are contesting; and

(b) A specific statement of the issue(s) and the law involved; and

(c) Your reasons for contesting the ((~~department's~~)) decision.

(3) Your written application for hearing must be delivered to the board of appeals in person, electronically by fax or by certified mail. (See WAC 388-02-0030.)

(4) Once the board of appeals receives your written application, an adjudicative hearing will be scheduled.

(5) The adjudicative hearing will be governed by the provisions of chapter 34.05 RCW((~~, Administrative Procedure Act~~)) and chapter 388-02 WAC.

WSR 14-21-016
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed October 2, 2014, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-068.

Title of Rule and Other Identifying Information: The department is amending chapter 388-71 WAC, specifically adult day services.

Hearing Location(s): Office Building 2, 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 December 9, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 10, 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 5:00 p.m., December 23, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant by November 25, 2014, TTY (360) 664-6178, or (360) 664-6092, or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-71 WAC, specifically adult day services, in order to differentiate adult day care from adult day health by separating the rules and to update the rule to meet the provider practice changes.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Casey Zimmer, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2526.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

September 30, 2014
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-22 issue of the Register.

WSR 14-21-022
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 3, 2014, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-115.

Title of Rule and Other Identifying Information: WAC 98-70-010, cemetery licensing services and WAC 308-48-800, funeral licensing services.

Hearing Location(s): 405 Black Lake Boulevard, Building 2, Room 2105, Olympia, WA 98502, on November 25, 2014, at 11:30 a.m.

Date of Intended Adoption: November 26, 2014.

Submit Written Comments to: Grace Hamilton, P.O. Box 9045, Olympia, WA 98507, e-mail funerals@dol.wa.gov, fax (360) 570-7098, by November 24, 2014.

Assistance for Persons with Disabilities: Contact Autumn Dryden by November 24, 2014, TTY (360) 664-0116, or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will suspend fee amounts for a preset period of time in an effort to maintain a balanced budget for the funeral and cemetery licensing programs.

Reasons Supporting Proposal: This program is required to be self-supporting and operates out of a dedicated fund. Revenue currently being generated to cover the cost of the program is excessive without the partial fee suspension in place. This trend is expected to continue over the next couple of years. The partially suspended fees would have a positive impact on new applicants and existing licensees. These proposed rule amendments are supported by industry.

Statutory Authority for Adoption: RCW 68.05.205, 18.39.050.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Grace Hamilton, 405 Black Lake Boulevard, Building 2, Olympia, (360) 664-6652; Implementation and Enforcement: Lorin Doyle, 405 Black Lake Boulevard, Building 2, Olympia, (360) 664-1386.

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

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). No economic impact of applicants or licensees.

October 3, 2014
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-24-044, filed 11/24/10, effective 1/1/11)

WAC 98-70-010 Fees. ((~~The following fees shall be charged by the professional licensing division of the department of licensing:~~)) (1) Suspension of fees. Effective January 1, 2015, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

Renewal Fees	**Fee**
Certificate of authority	
Renewal	$5.58
Charge per each interment, entombment and inurnment during preceding calendar year	
Crematory license/endorsement	
Renewal	$7.20
Crematory endorsement renewal	
Charge per cremation performed during previous calendar year:	
Charge per cremation	$7.20
Prearrangement sales license	
Renewal	$205.00
Exemption from prearrangement sales license	
Renewal	$32.00
Cremated remains disposition permit or endorsement	
Renewal	$32.00

The fees set forth in this section shall revert back to the fee amounts shown in this section on January 1, 2017.

(2) **Fees.**

Title of Fee	**Fee**
Certificate of authority	
Application	$300.00
Renewal	$6.20
Charge per each interment, entombment and inurnment during preceding calendar year	
Crematory license/endorsement	
Application	$210.00
Renewal	$8.00
Crematory endorsement renewal	
Charge per cremation performed during previous calendar year:	
Charge per cremation performed before 1/1/2011.	$6.50
Charge per cremation performed on or after 1/1/2011.	$8.00

Title of Fee	Fee
Prearrangement sales license	
Application	$250.00
Renewal	$225.00
Exemption from prearrangement sales license	
Application	$70.00
Renewal	$35.00
Cremated remains disposition permit or endorsement	
Application	$70.00
Renewal	$35.00

AMENDATORY SECTION (Amending WSR 10-24-046, filed 11/24/10, effective 1/1/11)

WAC 308-48-800 Funeral director/embalmer fees. ((~~The following fees shall be charged by the professional licensing division of the department of licensing:~~)) (1) **Suspension of fees.** Effective January 1, 2015, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

Title of Fee	Fee
Embalmer:	
Renewal	$135.00
Late renewal penalty	32.00
Embalmer intern:	
Intern renewal	90.00
Funeral director:	
Renewal	135.00
Late renewal penalty	32.00
Funeral director intern:	
Intern renewal	90.00
Funeral establishment:	
Renewal	295.00
Branch renewal	295.00
Preneed renewal	205.00
Crematory endorsement renewal	7.20
Charge per cremation performed during previous calendar year:	
Charge per cremation	7.20
Certificate of removal registration:	
Renewal	14.00

The fees set forth in this section shall revert back to the fee amounts shown in this section on January 1, 2017.

(2) **Fees.**

Title of Fee	Fee
Embalmer:	
State examination application	$100.00
Renewal	150.00
Late renewal penalty	35.00
Duplicate	25.00
Embalmer intern:	
Intern application	135.00
Application for examination	100.00
Intern renewal	100.00
Duplicate	25.00
Funeral director:	
State examination application	100.00
Renewal	150.00
Late renewal penalty	35.00
Duplicate	25.00
Funeral director intern:	
Intern application	135.00
Application for examination	100.00
Intern renewal	100.00
Duplicate	25.00
Funeral establishment:	
Original application	400.00
Renewal	325.00
Branch registration	350.00
Branch renewal	325.00
Preneed application	250.00
Preneed renewal:	225.00
Crematory endorsement registration	210.00
Crematory endorsement renewal	8.00
Charge per cremation performed during previous calendar year:	
Charge per cremation performed before 1/1/2011.	6.50
Charge per cremation performed on or after 1/1/2011.	8.00
Academic intern	No fee
Certificate of removal registration:	
Application	30.00
Renewal	15.00
Retired status certificate	No fee

WSR 14-21-029
PROPOSED RULES
GAMBLING COMMISSION
[Filed October 6, 2014, 11:00 a.m.]

Continuance of WSR 14-12-103.

Preproposal statement of inquiry was filed as WSR 14-06-092.

Title of Rule and Other Identifying Information: New WAC 230-16-003 Bingo and pull-tab manufacturers must make related products and equipment available to all distributors.

Hearing Location(s): The hearing date will depend on when we receive the attorney general opinion. We anticipate a hearing in 2015 at either the January 8 or 9, February 12 or 13, or March 12 or 13, public meeting. Visit our web site at www.wsgc.wa.gov and select *Public Meeting* about ten days before each meeting to confirm if this item is on the agenda and to confirm the meeting date, location and start time. We anticipate the January, February and March meetings will be held in either the Olympia or Seattle area at 9:00 a.m. or 1:00 p.m.

Date of Intended Adoption: January 8 or 9, February 12 or 13, or March 12 or 13, 2015.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by January 1, 2015.

Assistance for Persons with Disabilities: Contact Michelle Rancour by January 1, 2015, TTY (360) 486-3637, or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At their April 2014 meeting, the commissioners filed a petition for rule change from a licensed distributor representative requesting a new rule to require licensed manufacturers of bingo and pull-tab products and equipment to make their products and equipment available to all distributors for the same price and terms. The new rule also sets out the following:

- In the absence of an established line of credit with terms, all bingo and pull-tab products and equipment must be made available on a cash basis; and
- Manufacturers must not dictate purchasing requirements to distributors, such as quantities and mix of products that must be purchased; and
- Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to the commission.

At their July 2014 meeting, the commissioners voted to request an informal attorney general opinion on whether the commission has the statutory authority to rule make in this area and, if yes, can the commission apply the requirement to specific types of licensees. When we receive this attorney general opinion [we] will determine when this item will be back on the commission's public meeting agenda.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Mr. John Lowmon, licensed distributor representative, private.

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

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Rules Package: WAC 230-16-003 Availability of bingo and pull-tab products and equipment.

John Lowmon has petitioned to amend the rule to require licensed manufacturers of bingo and pull-tab products and equipment to make their products and equipment available to all distributors for the same price and terms. Mr. Lowmon states in his petition there are licensed distributors unable to purchase bingo and pull-tab products from manufacturers.

The proposed new rule also provides:

- Absent an established line of credit with terms, all bingo and pull-tab products and equipment must be provided on a cash basis; and
- Manufacturers must not dictate purchasing requirements to distributors, such as quantities and mix of products that must be purchased; and
- Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to the commission.

Notification and Involvement of Small Businesses: Licensees impacted by this proposal were notified of the petitioner's proposed changes on March 4, 2014, through the Washington State Register, WSR 14-06-092, direct notification, providing information to publications likely to be obtained by small businesses, and posting on the agency web site.

Letters were sent to licensed manufacturers and distributors and a trade association asking for feedback and response to five questions:

(1) What kinds of additional professional services will you need to comply with the proposed rule(s)?

(2) Is there an increased cost in equipment, supplies, labor or administrative costs to comply with the proposed rule(s)?

(3) Will complying with the proposed rule(s) cause your business to lose sales or revenue?

(4) Do you have an estimate for the number of jobs created or lost as a result of complying with the rule(s)?

(5) About how many employees do you have?

As of May 30, 2014, commission staff received twenty-three letters or e-mails supporting the proposal (nineteen were form letters), five letters or e-mails opposing the proposal, and one letter from a person who was neutral.

Summary of letters supporting the petition:

- The petitioner, John Lowmon, distributed form letters asking for support for the rule change. The form letter stated:
  1. Major pull-tab manufacturers are intentionally discriminating against Washington state pull-tab dis-

tributors by blocking access to their product lines without cause.
2. This is an intentional and willful attempt to force some distributors out of business.
3. This is wrong and blocks businesses and nonprofit organizations from access to the variety of products they want for their customers and could ultimately force them to deal with distributors they may not wish to do business with.
4. Many business owners and nonprofit organizations are directly affected when they cannot get the available product to their customers and members due solely to discriminatory acts by these same manufacturers.

- It is only fair all licensed distributors can buy product licensed by the state because it is a state regulated product. Should be able to buy product just like other distributors. Arrow International has a monopoly on the market, and they decline product to certain manufacturers. The rule will put the market back on a level playing field. All licensed manufacturers should have to sell product to all licensed distributors. It's not a fair market when my competition can get product I can't.
- Arrow International said they would not sell to me because of a credit issue, and they have said this for ten years; it's false and defamatory. Arrow has discriminated and slandered my company for ten years.
- Testified several years ago opposing deregulation of the pull-tab industry and everything I predicted that would happen with deregulation has happened: Number of distributors has been reduced by more than fifty percent; predatory pricing by some distributors occurs regularly; manufacturers have greater control of whom and under what terms they sell product to.

Summary of letters opposing the petition:

- A distributor said he's been licensed since 1972. He was very concerned about potential negative impact and testified in the past in opposition to changing the rules. Nine years later since deregulating Washington state gambling commission (WSGC) oversight of the credit and pricing rules, his concerns "turned out to be unfounded as I have experienced no negative impact to my business." His company has six employees and in response to the questions about the small business economic impact, he cannot predict what may happen if the rule change is adopted. He has witnessed the "detailed investigation and exhaustive public debate the WSGC has committed to this subject in previous years," and wonders "why we are still being asked to comment on this issue, now for the fourth time in nine years, since the original discussion." Enough time and energy has been spent on this subject and "I would prefer the rules be maintained as they are currently written."
- The proposal is bad business. "What smart businessperson would continue to sell to someone who owes him/her money? What smart businessperson would charge the same price to a customer that buys 10,000 items as he/she charges another person that buys just 1 of the same item?" The proposal will hurt manufacturers, bingo players and the charities, organizations and taverns relying on our products. Will require manufacturer to sue or write-off outstanding debt owed. Manufacturer's reputation and brand value would be seriously hurt because it is the manufacturer's name and logo players see on the product, not the distributor's. A bad distributor can tarnish a manufacturer's name and reputation, and choosing who it does business with, helps prevent that. By working with a select few distributors, a manufacturer can better handle inventory needs for a more efficient and cheaper business operation. Requiring a manufacturer to sell to every distributor in the state will cause more paperwork and administrative costs handling and coordinating returns.
- The proposed rule is a "throw-back to an earlier time, but without the safeguards that existed during that earlier time." Nothing has happened in the past seven years that "would make restrictions on the business relationship between a bingo and/or pull-tab manufacturer and distributor a part of the Commission's core mission." The proposal is similar to previous proposals brought forward in 2006 and 2007 and is unfair and unworkable. There is no rational basis for singling out bingo and pull-tab manufacturers for regulation, but leaving other manufacturers and distributors free to set their own prices and terms. The proposal should be rejected by the commission for all the same reasons the rule was repealed in 2005, and similar proposals were rejected in 2006 and 2007. If the commission adopts the proposal, it must reinstate the rules prohibiting extension of credit between manufacturers and distributors for over sixty days, and allow a manufacturer to refuse to sell to any distributor delinquent on its account.
- Forcing manufacturers to sell to every distributor is beyond the scope of the gambling commission's duties. Manufacturers and distributors should do whatever legal business practices are required to ensure the viability of their business. WSGC would need additional staff to police the changes, the agency already is facing budget issues, and the agency has reviewed this issue several times and realized they should not regulate commerce.

Commission staff discussed the petitioner's proposal during study sessions in March, April and May 2014. Comments were solicited at the open public meeting(s) of the gambling commission in April and May, 2014. About four persons testified to support the proposed rule change at the April and May 2014 commission meetings, and about three persons testified in opposition to the proposal.

May 2014 Commission Meeting:
Persons testifying in support:

- The petitioner, John Lowmon, said as a distributor, he wasn't given access to certain products.
- Another distributor said he wanted to encourage adherence to the spirit of the rule if it passed.

Persons testifying in opposition:

- A manufacturer said the commission needed to decide whether it wanted to regulate business practices. Has

seen the industry shrink nationwide, not just in Washington. Seems a few distributors are in a bad position and it is a capital intensive business. They've invested in certain distributors and should get to choose who represents their product.

April 2014 Commission Meeting:

Persons testifying in support:

- The petitioner, John Lowmon, said he's concerned about pull-tabs, not as concerned about bingo paper, and the problem is one licensee in Washington. If there is a state ID stamp on the product, then the commission should be involved with this.
- A distributor said his sister owned the company since 1972. He joined the company about two years ago. When Gasperetti's started, they did over $6 million in business a year. They started being "punished" in July 2012 and they have lost half of their sales since then. If Gasperetti's closes, nineteen employees will lose their jobs and there'll be impacts on several other businesses.
- A distributor said she's been in the industry for thirty-five years. Worked for Mr. Ed's for twenty-five years. She's been dealing with this issue for 10 years. She was told at one point they stopped sales due to her credit worthiness. She discussed issues she's had about a bad check and some history related to that. She said she feels the gambling commission, attorney general's office, and Arrow have made this bad debt follow her even though she was not the owner of the company that issued the bad check.

Persons testifying in opposition:

- Manager of a manufacturing plant in Lynnwood said he has been involved in the business since 1983. If distributors will be representing their brand, they should have some say in who does. Doesn't believe these types of business relationships are part of the commission's business. Doesn't see the harm done.
- A distributor/manufacturer said the rules were taken out because it was a regulatory nightmare for the gambling commission and for distributors.
- Thinks it has been fine without the rules. The commission's role is to make sure that gambling is safe for the public. This rule proposal is not related to this.

1. Describe the reporting, recordkeeping and other compliance requirements of the proposed rule.

(1) Manufacturers shall make all bingo and pull-tab products and equipment available to all distributors for the same price and terms. Credit terms are between the manufacture [manufacturer] and distributor and are not to be monitored by the commission.

(2) Absent an established line of credit with terms, all bingo and pull-tab products and equipment must be provided on a cash basis.

(3) Manufacturers shall not dictate purchasing requirements to distributors; such [as] the quantity of items and product mix to be purchased.

(4) Any denial by a manufacture [manufacturer] to sell to a distributor must be detailed and provided in writing to the distributor and reported to the commission.

2. Describe the kinds of professional services a small business is likely to need to comply: We do not expect there will be any professional services needed to comply with this rule. We have not received feedback from the industry about needing professional services to comply with the petitioner's proposal from persons supporting and opposing the petition, however, one distributor said additional professional services will not be known until they understand the reporting requirements.

3. Costs of compliance, including costs of equipment, supplies, labor and increased administrative costs: We cannot predict the costs of compliance. We received feedback from two persons in the industry anticipating an increase in costs:

- One manufacturer states there will be an increase in paperwork and administrative work, and "costly and time-consuming litigation" costs associated with collecting on past due amounts for being forced to sell to a distributor with "a large accounts receivable balance." The manufacturer states it will be a "costly and time-consuming process" to deal with returns of product from distributors spread out all over the state, rather than from a select few distributors.
- A distributor anticipates increased costs of product passed on to distributors by the manufacturers.

4. Whether compliance with the rule, based on feedback received from licensees, will cause businesses to lose sales or revenue: We cannot predict whether there will be a loss in sales or revenue.

Most persons in the industry supporting the petition say they expect an increase in sales and revenue. One distributor stated they anticipated a loss in sales and revenues due to price increases.

5. A determination of whether the proposed rule will have a disproportionate impact on small businesses. In making this determination, the costs of compliance for a small business must be compared with the cost of compliance for ten percent of businesses that are the largest businesses required to comply with the proposed rule using one of the following as a basis for comparing costs:

1. **Cost per employee; or**
2. **Cost per hour of labor; or**
3. **Cost per $100 of sales.**

There are no disproportionate impacts because there are no costs for compliance for a small business. Many persons in the industry said they anticipated increased sales or revenue because of the proposed rule change. One small business anticipated an increase in the price of the product.

6. List the steps taken to reduce the costs of the rule on small businesses or state the reasonable justification for not doing so. If there is a disproportionate impact on small business (as determined in #5 above), we must, where legal and feasible, reduce the costs on small busi-

nesses. We must consider each of the following methods of reducing the impact on small businesses:

1. **Reducing, modifying, or eliminating substantive regulatory requirements.**
2. **Simplifying, reducing, or eliminating record-keeping and reporting requirements.**
3. **Reducing the frequency of inspections.**
4. **Delaying compliance timetables.**
5. **Reducing or modifying fine schedules for non-compliance.**
6. **Any other mitigation steps/techniques.**

We have not identified a disproportionate impact on small businesses in the costs of compliance.

7. A description of how the gambling commission will involve small businesses in developing the rule: All rules are discussed at study sessions held prior to the start of commission meetings before they are put on the commission's agenda. The purpose of these study sessions is to get input from the industry. Letters were sent to manufacturers, distributors and a trade organization. This rule was discussed at three study sessions. The proposal has been filed for further discussion. The commission took public testimony at the April and May 2014 meetings.

8. A list of industries required to comply with the rule: Gambling industries are indentified [identified] by a four digit number, 7132, designated by the North American Industry Classification System, and published by the United States Department of Commerce.

9. An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule: We have identified no loss or creation of jobs resulting from compliance from the proposed rule. However, one distributor anticipates one to two jobs may be lost due to operators closing and lower sales and revenues, while three other distributors believe one to two jobs will be created.

A copy of the statement may also be obtained by contacting Susan Newer, Rules Coordinator, WSGC, P.O. Box 42400, Olympia, WA 98504, phone (360) 486-3466, fax (360) 486-3625, e-mail Susan.Newer@wsgc.wa.gov.

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

October 6, 2014
Susan Newer
Rules Coordinator

Alternate 1

NEW SECTION

WAC 230-16-003 Bingo and pull-tab manufacturers must make related products and equipment available to all distributors. (1) Manufacturers must make all bingo and pull-tab products and equipment available to all distributors for the same price and terms. Credit terms are between the manufacturer and distributor and are not to be monitored by us.

(2) In the absence of an established line of credit with terms, all bingo and pull-tab products and equipment must be made available on a cash basis.

(3) Manufacturers must not dictate purchasing requirements to distributors, such as the quantity of items and product mix to be purchased.

(4) Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to us.

WSR 14-21-041
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING
[Filed October 7, 2014, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-106.

Title of Rule and Other Identifying Information: WAC 170-296A-1175 Basic twenty-hour STARS training, 170-296A-1910 Basic twenty-hour STARS training, 170-296A-1975 Licensee/staff qualifications and requirements, and 170-296A-2075 Licensee and staff records.

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on November 25, 2014, at 12 p.m.

Date of Intended Adoption: Not earlier than November 25, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by November 25, 2014.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by November 11, 2014, (360) 725-4523.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To remove language governing the duration of basic state training and registry system (STARS) training.

Reasons Supporting Proposal: Rule making is needed to remove language specifying the duration of basic STARS training in order to implement the new STARS curriculum, which requires thirty hours to complete. Whereas, existing WAC language specifies that basic STARS training has a twenty hour duration. The new STARS curriculum for providers contains additional training on safe sleep practices for infants to prevent sleep related incidents. Further, the new curriculum incorporates new research, updated child guidance training aligned with best practices, and additional information tied to early brain and biological development, and is aligned with DEL's child care quality framework.

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

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Mary Kay Quinlan, Licensing Administrator, DEL State

Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

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

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

October 7, 2014
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-1175 Basic ((~~twenty-hour~~)) STARS training. A license applicant must complete the basic ((~~twenty-hour~~)) STARS training prior to an initial license being granted by the department.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-1910 Basic ((~~twenty-hour~~)) STARS training. A primary staff person must complete the basic ((~~twenty-hours of~~)) STARS training prior to working unsupervised with the children.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-1975 Licensee/staff qualifications and requirements table. The following table summarizes the licensee and staff qualifications and requirements found in WAC 170-296A-1700 through 170-296A-1950, and 170-296A-7675. An "X" indicates a requirement.

Licensee and Staff Qualifications Table

Position	Minimum age	High school diploma or equivalent	Background check	TB test	DEL orientation	Basic ((~~20-hour~~)) STARS	Ongoing training 10-hours per year	Fire safety training	First aid/ CPR	HIV/ AIDS	Food handler permit
Licensee	18	X	X	X	X	X	X	X	X	X	X
Primary staff person	18		X	X		X	X	X	X	X	See WAC 170-296A-7675(3) regarding when other staff must have a food handler permit
Assistant/ volunteer	14		X Noncriminal background check only age 14-15	X				X	X	X	See WAC 170-296A-7675(3) regarding when other staff must have a food handler permit

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-2075 Licensee and staff records. Records on file for the licensee and each staff person must include documentation of:

(1) Current first aid and infant, child and adult CPR training certification;

(2) HIV/AIDS training certification;

(3) TB test results or documentation as required under WAC 170-296A-1750;

(4) Current state food handler permit for the licensee, and for other staff if required under WAC 170-296A-7675(3);

(5) Completed background check form, or noncriminal background check form if applicable under WAC 170-296A-1225, and copy of the department-issued authorization;

(6) Copy of a current government issued picture identification;

(7) Emergency contact information;

(8) Completed application form or resume for staff when hired;

(9) Documentation for the licensee's and primary staff person only of:

(a) Basic ((~~twenty hour~~)) STARS training;

(b) Ongoing training completed; and

(c) Registration in MERIT.

(10) Record of training provided by the licensee to staff and volunteers; and

(11) Resume for the licensee only.

WSR 14-21-042
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING

[Filed October 7, 2014, 12:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-106.

Title of Rule and Other Identifying Information: WAC 170-297-1710 Program director, 170-297-1715 Site coordi-

nator, 170-297-1720 Lead teachers, 170-297-1775 Basic twenty hour STARS training, and 170-297-2075 Staff records.

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on November 26, 2014, at 12 p.m.

Date of Intended Adoption: Not earlier than November 26, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by November 26, 2014.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by November 12, 2014, (360) 725-4523.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To remove language governing the duration of basic state training and registry system (STARS) training.

Reasons Supporting Proposal: Rule making is needed to remove language specifying the duration of basic STARS training in order to implement the new STARS curriculum, which requires thirty hours to complete. Whereas, existing WAC language specifies that basic STARS training has a twenty hour duration. The new STARS curriculum for providers contains additional training on safe sleep practices for infants to prevent sleep related incidents. Further, the new curriculum incorporates new research, updated child guidance training aligned with best practices, and additional information tied to early brain and biological development, and is aligned with DEL's child care quality framework.

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

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

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

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

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

October 7, 2014
Elizabeth M. Hyde
Director

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

WAC 170-297-1710 Program director. (1) The licensee must serve as or employ a program director who is responsible for the overall management of the child care program and operation.

(2) The program director must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(3) The program director must:

(a) Be at least twenty-one years of age;

(b) Have two years' experience in management, supervision, or leadership;

(c) Attend a department orientation within six months of employment or assuming the position;

(d) Have a TB test as required under WAC 170-297-1750;

(e) Have a background clearance as required under chapter 170-06 WAC;

(f) Have current CPR and first-aid certification as required under WAC 170-297-1825;

(g) Complete HIV/AIDS training and annual bloodborne pathogens training as required under WAC 170-297-1850;

(h) Have a high school diploma or equivalent;

(i) Have a minimum of forty-five college credits (or thirty college credits and one hundred fifty training hours) in approved school-age credits as specified in the Washington state guidelines for determining related degree and approved credits; and

(j) Have completed ((~~twenty hours of~~)) basic STARS training or possess an exemption.

(4) A program director must be on the premises as needed.

(5) When the program director is not on-site the program director must leave a competent, designated staff person in charge. This staff person must meet the qualifications of a site coordinator and may also serve as child care staff when that role does not interfere with management and supervisory responsibilities.

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

WAC 170-297-1715 Site coordinator. (1) A child care program may employ a site coordinator responsible for being on-site with children, program planning, and program implementation. The site coordinator must provide regular supervision of staff and volunteers.

(2) The site coordinator must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(3) Site coordinator staff must:

(a) Be twenty-one years of age;

(b) Have two years management experience in a related field;

(c) Attend a department orientation within six months of employment or assuming the position;

(d) Have a high school diploma or equivalent;

(e) Have completed thirty college credits in approved school-age credits as specified in the Washington state guidelines for determining related degree and approved credits, or twenty college credits and one hundred clock hours of related community training;

(f) Have completed ((~~twenty hours of~~)) basic STARS training or possess an exemption;

(g) Complete ongoing training hours as required under WAC 170-297-1800;

(h) Develop an individual training plan;

(i) Have a food worker card, if applicable; and

(j) Attend an agency orientation as required under WAC 170-297-5800.

(4) A site coordinator must be on the premises for the majority of hours that care is provided each day. If temporarily absent from the program, the site coordinator must leave a competent, designated staff person in charge who meets the qualifications of a site coordinator.

(5) The site coordinator may also serve as child care staff when the role does not interfere with management and supervisory responsibilities.

AMENDATORY SECTION (Amending WSR 13-23-075, filed 11/19/13, effective 12/20/13)

WAC 170-297-1720 Lead teachers. (1) Lead teachers may be employed to be in charge of a child or a group of children.

(2) The lead teacher must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(3) Lead teachers must:

(a) Be eighteen years of age or older;

(b) Have one year experience in school-age care;

(c) Have a TB test as required under WAC 170-297-1750;

(d) Have a background clearance as required under chapter 170-06 WAC;

(e) Have current CPR and first-aid certification as required under WAC 170-297-1825;

(f) Complete HIV/AIDS training and annual bloodborne pathogens training as required under WAC 170-297-1850;

(g) Have a high school diploma or equivalent;

(h) Complete ((~~twenty hours of~~)) basic STARS training within three months of assuming the position of lead teacher;

(i) Complete ongoing training hours as required under WAC 170-297-1800;

(j) Have a food worker card, if applicable; and

(k) Attend an agency orientation as required under WAC 170-297-5800.

(4) Lead teachers are counted in the staff-to-child ratio.

(5) When the site coordinator is off-site or unavailable, lead teachers may assume the duties of site coordinator when they meet the site coordinator minimum qualifications, and may also serve as child care staff when the role does not interfere with management and supervisory responsibilities.

AMENDATORY SECTION (Amending WSR 13-23-075, filed 11/19/13, effective 12/20/13)

WAC 170-297-1775 Basic ((~~twenty hour~~)) STARS training. (1) Prior to working unsupervised with children the director, site coordinator, and lead teacher must register in MERIT.

(2) The director, site coordinator, and lead teacher must complete the basic ((~~twenty hours of~~)) STARS training within three months of assuming the position.

(3) If the director, site coordinator, or lead teacher qualifies for an exemption to the STARS training requirement, he or she must request an exemption to the requirement within ten days of assuming the position.

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

WAC 170-297-2075 Staff records. Records for each staff person must include documentation of:

(1) Current first aid, child and adult CPR training certification;

(2) Bloodborne pathogens training certification;

(3) HIV/AIDS training certification;

(4) TB test results or documentation as required under WAC 170-297-1750;

(5) Current state food worker card for staff if required under WAC 170-297-7675;

(6) Completed background check form if applicable under WAC 170-297-1200 and a copy of the department-issued authorization letter;

(7) Copy of a current government issued picture identification;

(8) Emergency contact information;

(9) Completed application form or resume for staff when hired;

(10) Documentation for staff of:

(a) ((~~Twenty hour~~)) Basic STARS training;

(b) Ongoing training completed; and

(c) Registration in MERIT;

(11) Record of training provided to staff and volunteers.

WSR 14-21-043
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING

[Filed October 7, 2014, 12:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-106.

Title of Rule and Other Identifying Information: WAC 170-295-1060 What initial and ongoing state training and registry systems (STARS) training is required for child care center staff?

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on November 27, 2014, at 12 p.m.

Date of Intended Adoption: Not earlier than November 27, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by November 27, 2014.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by November 13, 2014, (360) 725-4523.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To remove language governing the duration of basic STARS training.

Reasons Supporting Proposal: Rule making is needed to remove language specifying the duration of basic STARS training in order to implement the new STARS curriculum, which requires thirty hours to complete. Whereas, existing WAC language specifies that basic STARS training has a twenty hour duration. The new STARS curriculum for providers contains additional training on safe sleep practices for infants to prevent sleep related incidents. Further, the new curriculum incorporates new research, updated child guidance training aligned with best practices, and additional information tied to early brain and biological development, and is aligned with DEL's child care quality framework.

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

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

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

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

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

October 6, 2014
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-1060 What initial and ongoing state training and registry system (STARS) training is required for child care center staff? The director, program supervisor and lead teachers must register with the STARS registry and complete one of the following trainings within the first six months of employment or of being granted an initial license:

(1) ((~~Twenty clock hours or two college quarter credits of~~)) Basic training approved by the Washington state training registry system (STARS);

(2) Current child development associate certificate (CDA) or equivalent credential, or twelve or more college credits in early childhood education or child development; or

(3) Associate of arts (AA), associate of arts and sciences or higher college degree in early childhood education or child development.

WSR 14-21-066
PROPOSED RULES
BOARD OF INDUSTRIAL INSURANCE APPEALS

[Filed October 9, 2014, 2:32 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 263-12 WAC, Practice and procedure before the board of industrial insurance appeals.

Hearing Location(s): Board of Industrial Insurance Appeals, Main Conference Room, 2430 Chandler Court S.W., Olympia, WA 98502, on November 25, 2014, at 1:30 p.m.

Date of Intended Adoption: November 26, 2014.

Submit Written Comments to: J. Scott Timmons, P.O. Box 42401, Olympia, WA 98502, e-mail scott.timmons@biia.wa.gov, fax (855) 586-5611, by November 18, 2014.

Assistance for Persons with Disabilities: Contact Laura Bradley by November 18, 2014, (360) 753-6823 ext. 239.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **New rule: Motion practice before the board.**

Three new rules are proposed to be added to chapter 263-12 WAC to provide clear instructions for filing motions at the board:

1. **WAC 263-12-118 Motions**, this rule addresses motions generally and distinguishes motions to be filed with an industrial appeals judge or the executive secretary.

2. **WAC 263-12-11801 Motions that are dispositive—Motion to dismiss; motion for summary judgment; voluntary dismissal**, this rule codifies the existing practice for filing dispositive motions at the board, including motions to dismiss and motions for summary judgment.

3. **WAC 263-12-11802 Employer's motion for a stay of the order on appeal**, this rule clarifies the procedures for employers filing a motion for a stay of benefits pending appeal.

Amendments to WAC 263-12-017 Request for public records: This amendment updates the agency's rule to: (1) Reflect the legislature's recodification of the public records statutes from chapter 42.17 RCW to chapter 42.56 RCW; (2) assure it is consistent with case law; and (3) reflect the agency's current public records request processing practices.

Amendments to WAC 263-12-020 Appearances of parties before the board: The purpose of this amendment is to codify the agency's current practice and to reorganize the rule so that it is more user-friendly. The rule lists the type of representatives that may represent parties in different proceedings, how appearances are made by representatives, and duties of the industrial appeals judge.

Amendments to WAC 263-12-050 Contents of notice of appeal: This section deletes references to appeals filed under the Washington Industrial Safety and Health Act (WISHA). The deleted information in subsection (7) has been moved to WAC 263-12-059. The goal is to make the WISHA filing rules easier for readers to locate. This section is also amended to refer parties to WAC 263-12-059, which will

contain all filing requirements for WISHA appeals in one location.

Amendments to WAC 263-12-059 Appeals arising under the Washington Industrial Safety and Health Act—Notice to interested employees: This section is amended to make it easier for parties in appeals arising under WISHA to find the procedural filing requirements. The filing information will be found in one rule instead of the current two. In addition to moving what is currently contained in WAC 263-12-050(7) to this rule, the amendment also extends the amount of time parties have to file documents when an appeal includes a request for stay of abatement, clarifies some filing requirements consistent with current practice, and clarifies when the board will deny a request to stay abatement pending appeal.

Amendments to WAC 263-12-092 Mediation conferences: Amendments to this section are proposed to incorporate and reflect changes made by sections 1 and 2, chapter 142, Laws of 2014, which exempt claim resolution structured settlement agreement information from public disclosure under RCW 42.56.230 and 51.04.063, and to clarify that no one is permitted to make an audio or video recording of mediation conferences.

Amendments to WAC 263-12-115 Procedures at hearings: The purpose of this amendment is to clarify and codify the agency's current practice with regard to testimony. Telephone testimony may be presented with the agreement of all parties. If the parties cannot agree, the rule outlines several relevant factors for the judge to consider in deciding the matter. The factors are drawn from existing case law.

Amendments to WAC 263-12-116 Exhibits: This section is amended to codify the board's current practice into the rule. The goal is to avoid having a contaminated or hazardous device connected to agency computers and the board network. If a party wants to play electronic media (other than a videotape), the party must supply the equipment for viewing the item during the hearing. This is necessary because many agency hearings are taken at locations outside the board's Olympia office. If a party does not have equipment to play the electronic media, the rule provides for contacting the industrial appeals judge in advance of the hearing so that arrangements can be made to play the device on agency equipment. The rule further provides that if an infected device is submitted, the exhibit can be rejected as any other hazardous exhibit.

Amendments to WAC 263-12-117 Perpetuation depositions: The purpose of this amendment is to codify the agency's current practice. Telephone depositions may be taken without restriction if all parties agree. The rule also provides a summary of relevant factors for the judge to consider if a party objects to telephone deposition and the judge must intercede to resolve the dispute. The factors are drawn from existing case law.

Amendments to WAC 263-12-052 Contents of claim resolution structured settlement agreement: The purpose of this amendment is to conform the filing requirements for a structured settlement agreement, where the worker is represented by an attorney, to the Court of Appeals Division II decision in *Board of Industrial Insurance Appeals v. South Kitsap School District* No. 43688-4-II (May 20, 2014).

Amendments to WAC 263-12-01501 Communications and filing with the board: This amendment clarifies the current practice of the board regarding when communication is deemed filed if it is sent via facsimile or through the internet. Housekeeping changes are also made and are limited to formatting and numbering. Additionally this amendment adds a section on electronic filing with the board. This would allow the parties to file any document with the board via the board's internet site.

Statutory Authority for Adoption: RCW 51.52.020.

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

Name of Proponent: Board of industrial insurance appeals, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: J. Scott Timmons, 2430 Chandler Court S.W., Olympia, WA 98502, (360) 753-6823.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no impact or financial issue in the amendments being made or in the new proposed rules. The amendments and new rules are to clarify procedural rules relating to administrative hearings.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are not legislative. They relate to procedures related to agency hearings or clarify a rule without changing its effect.

October 9, 2014
J. Scott Timmons
Executive Secretary

AMENDATORY SECTION (Amending WSR 11-23-154, filed 11/22/11, effective 12/23/11)

WAC 263-12-01501 Communications and filing with the board. (1) **Where to file communications with the board.** ((~~(a) **Where to file.**~~)) Except as provided elsewhere in this section all written communications((~~, except those listed below,~~)) shall be filed with the board at its headquarters in Olympia, Washington. With written permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

((~~(b)~~)) (2) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board personally, by mail, ((~~or~~)) by telephone facsimile, or by electronic filing.

((~~(i)~~)) (a) **Filing personally.** The filing of a written communication with the board personally is ((~~perfected~~)) accomplished by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

((~~(ii)~~)) (b) **Filing by mail.** The filing of a written communication with the board is ((~~perfected~~)) accomplished by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written

communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

((~~(iii)~~)) (c) **Filing by telephone facsimile.**

((~~(A)~~)) (i) The filing of a written communication with the board by telephone facsimile is ((~~perfected~~)) accomplished when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment during the board's customary office hours. All facsimile communications((~~, except those listed below, shall~~)) must be filed with the board ((~~at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle~~)) via fax numbers listed on the board's web site.

((~~(B)~~)) (ii) The hours of ((~~operation~~)) staffing of the board's telephone facsimile equipment are ((~~8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. If a transmission of a written communication commences after these hours of operation the written communication shall be deemed filed on the next business day~~)) the board's customary office hours. Documents sent by facsimile communication comments outside of the board's customary office hours will be deemed filed on the board's next business day.

((~~(C)~~)) (iii) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

((~~(D) No~~)) (iv) Written communication should not exceed fifteen pages in length, exclusive of the cover page required by this rule.

((~~(E)~~)) (v) The party attempting to file ((~~the~~)) a written communication by telephone facsimile bears the risk that the written communication will not be received or legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

((~~(F)~~)) (vi) The board may require a party to file an original of any document previously filed by telephone facsimile.

((~~(iv)~~)) (d) **Electronic filing.** Electronic filing is accomplished by using the electronic filing link on the board's web site. Communication sent by e-mail will not constitute or accomplish filing. Communication filed using the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(3) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's ((~~internet~~)) web site. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. ((~~Otherwise the notice of appeal is considered filed at the beginning of the next business day.~~)) Appeals received via the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. The board ((~~shall~~)) will issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board ((~~must~~)) will notify the filing party of the rejection.

((~~(v)~~)) (4) **Electronic filing of application for approval of claim resolution structured settlement agreement.** An application for approval of claim resolution structured settlement agreement must be filed electronically using the form for electronic filing of applications for approval of claim resolution structured settlement agreement as provided on the board's ((~~internet~~)) web site. An electronic application for approval of claim resolution structured settlement agreement is filed when received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. ((~~Otherwise the application for approval of claim resolution structured settlement is considered to be filed at the beginning of the next business day.~~)) Applications received by the board via the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. The board ((~~shall~~)) will issue confirmation to the filing party that an electronic application for approval of claim resolution structured settlement agreement has been received. An electronic copy of the signed agreement for claim resolution structured settlement agreement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution structured settlement agreement that fails to comply with the board's filing requirements. The board ((~~must~~)) will notify the filing party of the rejection.

((~~(e)~~)) (5) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the executive secretary of the board.

((~~(d)~~)) (6) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number ((~~which was~~)) assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be furnished to all other parties or their representatives of record, and the original shall demonstrate compliance with this requirement. All written communications with the board shall be on paper 8 1/2" x 11" in size.

AMENDATORY SECTION (Amending WSR 91-13-038, filed 6/14/91, effective 7/15/91)

WAC 263-12-017 Request for public records. (1) In accordance with requirements of chapter ((~~42.17 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or copies of such records may be inspected or copied, or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:~~)) 42.56 RCW, the board will make nonexempt "public records" available for inspection and copying.

(2) A request ((~~shall~~)) to inspect or copy public records should be made in writing upon ((~~a form prescribed by~~)) the ((~~board~~)) board's request form, which ((~~shall be~~)) is available at its Olympia headquarters or its web site. The form ((~~shall~~)) may be presented to the public records officer, or to any member of the board's staff, if the public records officer is not available, at the headquarters of the board during customary office hours. The form may also be mailed, faxed, or e-mailed to the attention of the public records officer at the address or fax number provided on the board's web site.

The request ((~~shall~~)) should include the following information:

(a) The name and address of the person requesting the record and any other contact information, such as phone number or e-mail address, that may aid in responding to the request;

(b) The date ((~~of which~~)) the request ((~~was~~)) is made;

(c) The ((~~nature of the request;~~

~~(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index; and~~

~~(e) If the request matter is not identifiable by reference to the board's current index, and appropriate description of the record requested~~)) identity of the record(s) requested. If the record(s) requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index should be included whenever possible. If the requested record(s) is not identifiable by reference to the board's current index, as detailed a description as possible should be included to aid staff in identifying the records sought; and

(d) Whether the request is for copies or to inspect records.

(3) Requestors desiring copies of records shall make arrangements with the records officer to pay for the cost of providing the records. Costs shall include the cost of copies and the cost of mailing the records. The per page cost for standard size (8 1/2" x 11") black and white or color photocopies will be as posted on the board's web site. Nonstandard-sized documents and documents produced on something other than paper will be provided at the actual cost to reproduce and may include the cost of the materials used. Mailing cost will include actual postage and the cost of the container.

(4) Requestors desiring to inspect records shall make arrangements with the records officer for inspection. There is no cost to inspect records. Records will be made available for inspection at the board's Olympia headquarters during the board's customary office hours.

(5) In all cases in which a member of the public is making a request, ((~~it shall be the obligation of~~)) the public records officer or staff member to whom the request is made ((~~to~~)) will assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending WSR 10-14-061, filed 6/30/10, effective 7/31/10)

WAC 263-12-020 Appearances of parties before the board. (1) **Who may appear**((~~. (a)~~))**?** Any party to any appeal may appear before the board at any conference or hearing held in such appeal, either on the party's own behalf or by ((~~an attorney at law or other authorized lay representative of the party's choosing as prescribed in subsection (3) below~~)) a representative as described in subsections (3) and (4) of this section.

(2) **Who must obtain approval prior to representing a party?** A person who is disbarred or is presently suspended from the practice of law for disciplinary reasons in any jurisdiction, or has previously been denied admission to the bar in any jurisdiction for reasons other than failure to pass a bar examination, shall not represent a party without the prior approval of the board. A written petition for approval shall be filed sixty calendar days prior to any event for which the person seeks to appear as a representative. The board may deny any petition that fails to demonstrate competence, moral character, or fitness.

(3) **Who may represent a party?**

(a) A worker or beneficiary may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an attorney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) A lay representative so long as the person does not charge a fee and is not otherwise compensated for the representation except as provided in (a)(iv) of this subsection.

(iv) A person employed by the worker's labor union whose duties include handling industrial insurance matters for the union.

(b) An employer or retrospective rating group may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an attorney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) An employee of the employer or retrospective rating group.

(iv) A firm that contracts with the employer or retrospective rating group to handle matters pertaining to industrial insurance.

(((~~(b)~~))) (4) **Appeals under the Washington Industrial Safety and Health Act.**

(((~~(i)~~))) (a) In an appeal by an employee or employee representative under the Washington Industrial Safety and Health Act, the cited employer may enter an appearance as prescribed in subsection (((~~(2) below~~))) (7) of this section and will be deemed a party to the appeal.

(((~~(ii)~~))) (b) In an appeal by an employer, under the Washington Industrial Safety and Health Act, an employee or employee representative may enter an appearance as prescribed in subsection (((~~(2) below~~))) (7) of this section and will be deemed a party to the appeal.

(((~~(c)~~))) (5) **May a self-represented party be accompanied by another person?** Where the party appears representing himself or herself, he or she may be accompanied, both at conference and at hearing, by a lay person of his or her choosing who shall be permitted to accompany the party into the conference or hearing room and with whom he or she can confer during such procedures. If the lay person is also a witness to the proceeding, the industrial appeals judge may exclude the lay person from the proceeding as provided by Evidence Rule 615.

(((~~(d)~~))) (6) **Assistance by the industrial appeals judge.** Although the industrial appeals judge may not advocate for either party, all parties who appear either at conferences or hearings are entitled to the assistance of the industrial appeals judge presiding over the proceeding. Such assistance shall be given in a fair and impartial manner consistent with the industrial appeals judge's responsibilities to the end that all parties are informed of the procedure ((~~which is~~)) to be followed and the issues ((~~which are~~)) involved in the proceedings. Any party who appears representing himself or herself shall be advised by the industrial appeals judge of the burden of proof required to establish a right to the relief being sought.

(((~~(2)~~))) (7) **How to make an appearance.**

(a) Appearance by employer representative. Within fourteen days of receipt of an order granting appeal, any representative of an employer or retrospective rating group must file a written notice of appearance that includes the name, address, and telephone number of the individual who will appear.

(b) Appearances by a worker or beneficiary representative shall be made either by:

(i) Filing a written notice of appearance with the board containing the name of the party to be represented, and the name and address of the representative; or by

(ii) Appearing at the time and place of a conference or hearing on the appeal, and notifying the industrial appeals judge of the party to be represented, and the name and address of the representative.

(((~~(b)~~))) (8) **Notice to other parties.**

(a) The appearing party shall furnish copies of every written notice of appearance to all other parties or their representatives of record at the time the original notice is filed with the board.

(((~~(c)~~))) (b) The board ((~~shall~~)) will serve all of its notices and orders on each representative and each party represented. Service upon the representative shall constitute service upon the party. Where more than one individual associated with a firm, or organization, including the office of the attorney general, has made an appearance, service under this subsection shall be satisfied by serving the individual who filed the notice of appeal, or who last filed a written notice of appearance or, if no notice of appeal or written notice of appearance has been filed on behalf of the party, the individual who last appeared at any proceeding concerning the appeal.

(((~~(3) **Lay representation.** Duly authorized lay representatives may be permitted to appear in proceedings before the board without a formal request for admission to practice before the board so long as the lay representative does not charge a fee and is not otherwise compensated for the representation except as provided below:~~

~~(a) A worker or beneficiary may be represented by a person employed by the worker's labor union whose duties include handling industrial insurance matters for the union. Lay persons may not represent workers before the board in return for remuneration received from the worker or from the worker's receipt of benefits under this act.~~

~~(b) An employer may be represented by an employee. An employer may also be represented by a firm or firms that contracts with the employer to handle matters pertaining to industrial insurance without regard to whether a fee is charged. Within fourteen days of receipt of an order granting appeal, any representative of an employer must file a written notice of appearance that includes the name, address, and telephone number of the individual who will appear.~~

~~(c) In appeals involving the Washington Industrial Safety and Health Act under chapter 49.17 RCW and assessments under chapter 51.48 RCW, an employer may be represented by a lay person without regard to whether a fee is charged.~~

~~(d) Paralegals supervised by an attorney licensed in the state of Washington to practice law may represent any party appearing before the board.~~

~~(4)~~))) (9) **Withdrawal or substitution of representatives.** An attorney or other representative withdrawing from a case shall immediately notify the board and all parties of record in writing. The notice of withdrawal shall comply with the rules applicable to notices of withdrawal filed with the superior court in civil cases. Withdrawal ((~~shall be~~)) is subject to approval by the industrial appeals judge or the executive secretary. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record together with the written consent of the prior attorney or representative. If such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

(((~~(5)~~))) (10) **Conduct.** All persons appearing as counsel or representatives in proceedings before the board or before its industrial appeals judges shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(a) Industrial appeals judge. If any such person does not conform to such standard, the industrial appeals judge presiding over the appeal, at his or her discretion and depending on all the circumstances, may take any of the following actions:

(i) Admonish or reprimand such person((~~;~~)).

(ii) Exclude such person from further participation ((~~in the proceedings and~~)) or adjourn the ((~~same;~~)) proceeding.

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100((~~; or~~)).

(iv) Report the matter to the board.

(b) The board. In its discretion, either upon referral by an industrial appeals judge as stated above or on its own motion, after information comes to light that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board, and after notice and hearing, the board may take appropriate disciplinary action including, but not limited to:

(i) A letter of reprimand((~~;~~)).

(ii) Refusal to permit such person to appear in a representative capacity in any proceeding before the board or its industrial appeals judges((~~, or~~)).

(iii) Certification of the record to the superior court for contempt proceedings as provided in RCW 51.52.100. If the circumstances require, the board may take action as described above prior to notice and hearing if the conduct or fitness of the person appearing before the board requires immediate action in order to preserve the orderly disposition of the ((~~appeal or appeals~~)) appeal(s).

(c) Proceedings. If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the industrial appeals judge may, at his or her discretion and depending on all the circumstances:

(i) Admonish or reprimand such person((~~;~~)).

(ii) Exclude such person from further participation ((~~in the proceedings and~~)) or adjourn the ((~~same;~~)) proceeding.

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100((~~; or~~)).

(iv) Report the matter to the board for action consistent with (b) of this subsection.

AMENDATORY SECTION (Amending WSR 11-20-003, filed 9/21/11, effective 10/22/11)

WAC 263-12-050 Contents of notice of appeal. The board's jurisdiction shall be invoked by filing a written notice of appeal.

(1) **General rule.** In all appeals, the notice of appeal should contain where applicable:

(a) The name and address of the appealing party and of the party's representative, if any;

(b) A statement identifying the date and content of the department order, decision or award being appealed. This requirement may be satisfied by attaching a copy of the order, decision or award;

(c) The reason why the appealing party considers such order, decision or award to be unjust or unlawful;

(d) A statement of facts in full detail in support of each stated reason;

(e) The specific nature and extent of the relief sought;

(f) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held;

(g) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true;

(h) The signature of the appealing party or the party's representative.

(2) **Industrial insurance appeals.** In appeals arising under the Industrial Insurance Act (Title 51 RCW), the notice of appeal should also contain:

(a) The name and address of the injured worker;

(b) The name and address of the worker's employer at the time the injury occurred;

(c) In the case of occupational disease, the name and address of all employers in whose employment the worker was allegedly exposed to conditions that gave rise to the occupational disease;

(d) The nature of the injury or occupational disease;

(e) The time when and the place where the injury occurred or the occupational disease arose.

(3) **Crime Victims' Compensation Act.** In appeals arising under the Crime Victims' Compensation Act (chapter 7.68 RCW), the notice of appeal should also contain:

(a) The time when and the place where the criminal act occurred;

(b) The name and address of the alleged perpetrator of the crime; and

(c) The nature of the injury.

(4) **Assessment appeals.** In appeals from a notice of assessment arising under chapter 51.48 RCW or in cases arising from an assessment under the Worker and Community Right to Know Act (chapter 49.70 RCW), the notice of appeal should also contain:

(a) A statement setting forth with particularity the reason for the appeal; and

(b) The amounts, if any, that the party admits are due.

(5) **LEOFF and public employee death benefit appeals.** In appeals arising under the special death benefit provision of the Law Enforcement Officers' and Firefighters' Retirement System (chapter 41.26 RCW), the notice of appeal should also contain:

(a) The time when and the place where the death occurred; and

(b) The name and address of the decedent's employer at the time the injury occurred.

(6) **Asbestos certification appeals.** In appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects, the notice of appeal should also contain:

(a) A statement identifying the certification decision appealed from;

(b) The reason why the appealing party considers such certification decision to be incorrect.

(7) **WISHA appeals.** ((~~In appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW), where the employer has moved for a stay of abatement pursuant to RCW 49.17.140, the employer shall, within seven working days of the date of the board's notice of filing of appeal, file with the board, the department, and any~~

~~affected employees affidavits and documents supporting the request for a stay of the abatement of the violation(s). Supporting affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing: (1) whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and (2) whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.~~

~~If an employer fails to file the supporting documents within seven working days of the date of the board's notice of filing of appeal, the request for a stay of the abatement of the violation(s) will be denied. Within fourteen working days of the date of the board's notice of filing of appeal, the department of labor and industries and any affected employees shall file affidavits and documents supporting the request for a stay of the abatement of the violation(s). Supporting affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing: (1) whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and (2) whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.~~

~~In appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW), the appeal should also contain:~~

~~(a) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;~~

~~(b) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation(s);~~

~~(c) A statement certifying compliance with WAC 263-12-059.~~

~~(i) In appeals where the employer has made or renewed its request for a stay of the abatement of the violation(s) alleged in the citation and notice or corrective notice of redetermination, if the employer fails to comply with WAC 263-12-059, the motion for a stay of the abatement of the violation(s) will be denied.~~)) For appeals arising under the Washington Industrial Safety and Health Act, refer to WAC 263-12-059.

(8) **Other safety appeals.** In appeals arising under chapter 49.22 RCW concerning alleged violations of safety procedures in late night retail establishments, chapter 70.74 RCW concerning alleged violations of the Washington State Explosives Act, or chapter 88.04 RCW concerning alleged violations of the Charter Boat Safety Act, the notice of appeal should also contain:

(a) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;

(b) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation or violations;

(c) If applicable, a statement certifying compliance with WAC 263-12-059.

AMENDATORY SECTION (Amending WSR 11-20-003, filed 9/21/11, effective 10/22/11)

WAC 263-12-059 Appeals arising under the Washington Industrial Safety and Health Act((~~— Notice to interested employees~~)); contents of notice of appeal; notice to affected employees; request for stay of abatement pending appeal. (1) **Contents of notice of appeal in WISHA appeals**. In all appeals arising under the Washington Industrial Safety and Health Act, the notice of appeal should contain where applicable:

(a) The name and address of the appealing party and of the party's representative, if any.

(b) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from. This requirement may be satisfied by attaching a copy of the citation, penalty assessment, or notice of abatement date.

(c) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation(s). If the employer has no affected employees who are members of a union, the employer shall affirmatively certify that no union employees are affected by the appeal.

(d) The reason why the appealing party considers such order or decision, to be unjust or unlawful.

(e) A statement of facts in full detail in support of each stated reason.

(f) The specific nature and extent of the relief sought.

(g) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held.

(h) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true.

(i) The signature of the appealing party or the party's representative.

In all appeals where a stay of abatement of alleged violation(s) pending appeal is requested, the notice of appeal must comply with additional requirements set forth in subsection (3) of this section.

(2) **Employer duty to notify affected employees.**

(a) In the case of any appeal by an employer concerning an alleged violation of the Washington Industrial Safety and Health Act, the employer shall give notice of such appeal to its employees by either:

((~~(1)~~)) (i) Providing copies of the appeal to each employee member of the employer's safety committee; or

((~~(2)~~)) (ii) By posting a copy of the appeal in a conspicuous place at the work site at which the alleged violation

occurred. Any posting shall remain during the pendency of the appeal.

(b) The employer shall also provide notice advising interested employees that an appeal has been filed with the board and that any employee or group of employees who wish to participate in the appeal may do so by contacting the board. Such notice shall include the address of the board.

(c) The employer shall file with the board a certificate of proof of compliance with this section within fourteen days of ((~~receipt~~)) issuance of the board's notice ((~~acknowledging receipt of the appeal. In appeals where the employer has moved for a stay of the abatement of the violation(s) alleged in the citation and notice or corrective notice of redetermination, the employer shall include in the notice of appeal the names and addresses of any unions representing workers for the employer. If the employer fails to provide the names and addresses of union representatives at the time of filing of the notice of appeal, the motion to stay the abatement of the violation(s) will be denied. Additionally, the employer shall include with the notice of appeal a certification that the employer has posted the notice of appeal and the motion to stay the abatement of the violation(s) in a conspicuous place at the work site at which the alleged violation(s) occurred. If the employer fails to file a certification of the posting of the notice of appeal and the motion to stay the abatement of the violation(s), the motion to stay the abatement of the violation(s) will be denied. Any posting shall remain during the pendency of the appeal. If notice as required by this section is not possible the employer shall advise the board or its designee of the reasons why notice cannot be accomplished. If the board, or its designee, accepts the impossibility of the required notice it will prescribe the terms and conditions of a substitute notice procedure reasonably calculated to give notice to affected employees~~)) of filing of appeal. A certification form is provided on the board's web site.

(3) **Request for a stay of abatement in WISHA appeals.**

(a) **How made.** Any request for stay of abatement pending appeal must be included in the notice of appeal. An employer may request a stay of abatement pending appeal by placing "STAY OF ABATEMENT REQUESTED" prominently on the first page of the notice of appeal in bold print. The board will issue a final decision on such requests within forty-five working days of the board's notice of filing of appeal.

(b) **Union information.**

(i) **Appeals from corrective notice of redetermination.** In appeals where the employer has requested a stay of abatement of the violation(s) alleged in the corrective notice of redetermination, the employer shall include in the notice of appeal the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall affirmatively inform the board that no union employees are affected by the appeal.

(ii) **Appeals from citation and notice.** Where an employer files an appeal from a citation and notice and the department of labor and industries chooses to forward the appeal to the board to be treated as an appeal to the board, the employer shall provide the board with the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall inform the board that no union employees are affected by the appeal. The employer shall provide this information to the board within fourteen days of the date of the board's notice of filing of appeal.

(c) **Supporting and opposing documents.**

(i) **Supporting documents.** In appeals where the employer has requested a stay of abatement pursuant to RCW 49.17.140, the employer shall, within fourteen calendar days of the date of the board's notice of filing of appeal, file with the board supporting declarations, affidavits, and documents it wishes the board to consider in deciding the request. The employer must also simultaneously provide supporting documents to the department and any affected employees' safety committee or union representative. Supporting affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(ii) **Opposing documents.** Within twenty-eight calendar days of the date of the board's notice of filing of appeal, the department of labor and industries and any affected employees shall file with the board any declarations, affidavits, and documents they wish the board to consider in deciding the request. The department must also simultaneously serve these opposing documents on the employer and any affected employees' safety committee or representative. The employees must also simultaneously serve the opposing documents on the employer and the department. Supporting and opposing affidavits and declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(4) **Denial of request to stay abatement.** If any of the following procedural or substantive grounds are present, the

board will deny the request for a stay of abatement pending appeal:

(a) The request for stay of abatement is not contained in the employer's notice of appeal as required by RCW 49.17.140 (4)(a).

(b) The employer fails to include union information as required in subsection (3)(b) of this section.

The employer fails to timely file a certification that its employees have been notified about the appeal and the request for stay of abatement as required in subsection (2) of this section.

(c) The employer fails to file supporting documents within fourteen calendar days of the issuance of the board's notice of filing of appeal as required in subsection (3)(c)(i) of this section.

(d) The request is moot.

(e) The only violation alleged by the department of labor and industries is a general violation.

(f) The employer fails to show good cause for a stay of abatement in its supporting documents.

(g) The preliminary evidence shows it is more likely than not that a stay would result in death or serious physical harm to a worker.

(5) **Expedited nature of requests to stay abatement/ requests to enlarge time.** Requests to stay abatement pending appeal must be decided in accordance with a strict statutory timeline. Oral argument will not be permitted. The board will grant requests to enlarge time to file documents or certifications only after receipt of a written motion with supporting affidavit filed with the board and all other parties before the filing deadline and only upon a showing of good cause.

AMENDATORY SECTION (Amending WSR 08-01-081, filed 12/17/07, effective 1/17/08)

WAC 263-12-115 Procedures at hearings. (1) **Industrial appeals judge.** All hearings shall be conducted by an industrial appeals judge who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Order of presentation of evidence.**

(a) In any appeal under either the Industrial Insurance Act, the Worker and Community Right to Know Act, or the Crime Victims Compensation Act, the appealing party shall initially introduce all evidence in his or her case-in-chief except that in an appeal from an order of the department that alleges fraud or willful misrepresentation the department or self-insured employer shall initially introduce all evidence in its case-in-chief.

(b) In all appeals subject to the provisions of the Washington Industrial Safety and Health Act, the department shall initially introduce all evidence in its case-in-chief.

(c) After the party with the initial burden has presented his or her case-in-chief, the other parties may then introduce the evidence necessary to their cases-in-chief. In the event there is more than one other party, they may either present their cases-in-chief successively or may join in their presentation. Rebuttal evidence shall be received in the same order. Witnesses may be called out of turn in contravention of this rule only by agreement of all parties.

(3) **Objections and motions to strike.** Objections to the admission or exclusion of evidence shall be in short form, stating the legal grounds of objection relied upon. Extended argument or debate shall not be permitted.

(4) **Rulings.** The industrial appeals judge on objection or on his or her own motion shall exclude all irrelevant or unduly repetitious evidence and statements that are inadmissible pursuant to WAC 263-12-095(5). All rulings upon objections to the admissibility of evidence shall be made in accordance with rules of evidence applicable in the superior courts of this state.

(5) **Interlocutory appeals to the board - Confidentiality of trade secrets.** A direct appeal to the board shall be allowed as a matter of right from any ruling of an industrial appeals judge adverse to the employer concerning the confidentiality of trade secrets in appeals under the Washington Industrial Safety and Health Act.

(6) **Interlocutory review by a chief industrial appeals judge.**

(a) Except as provided in subsection (5) of this section interlocutory rulings of the industrial appeals judge are not subject to direct review by the board. A party to an appeal or a witness who has made a motion to quash a subpoena to appear at board related proceedings, may within five working days of receiving an adverse ruling from an industrial appeals judge request a review by a chief industrial appeals judge or his or her designee. Such request for review shall be in writing and shall be accompanied by an affidavit in support of the request and setting forth the grounds for the request, including the reasons for the necessity of an immediate review during the course of conference or hearing proceedings. Within ten working days of receipt of the written request, the chief industrial appeals judge, or designee, may decline to review the ruling based upon the written request and supporting affidavit; or, after such review as he or she deems appropriate, may either affirm or reverse the ruling, or refer the matter to the industrial appeals judge for further consideration.

(b) Failure to request review of an interlocutory ruling shall not constitute a waiver of the party's objection, nor shall an unfavorable response to the request preclude a party from subsequently renewing the objection whenever appropriate.

(c) No conference or hearing shall be interrupted for the purpose of filing a request for review of the industrial appeals judge's rulings; nor shall any scheduled proceedings be canceled pending a response to the request.

(7) **Recessed hearings.** Where, for good cause, all parties to an appeal are unable to present all their evidence at the time and place originally set for hearing, the industrial appeals judge may recess the hearing to the same or a different location so as to insure that all parties have reasonable opportunity to present their respective cases. No written "notice of hearing" shall be required as to any recessed hearing.

(8) **Failure to present evidence when due.** If any party is due to present certain evidence at a hearing or recessed hearing and, for any reason on its part, fails to appear and present such evidence, the industrial appeals judge may conclude the hearing and issue a proposed decision and order on

the record, or recess or set over the proceedings for further hearing for the receipt of such evidence.

(9) **Offers of proof in colloquy.** When an objection to a question is sustained an offer of proof in question and answer form shall be permitted unless the question is clearly objectionable on any theory of the case.

(10) **Telephone testimony.** At hearings, the parties may present the testimony of witnesses by telephone if agreed to by all parties and approved by the industrial appeals judge. The industrial appeals judge may authorize telephone testimony over the objection of a party after weighing the following nonexclusive factors:

• The need to weigh a witness's demeanor or credibility.

• Difficulty in handling documents and exhibits.

• The number of parties participating in the hearing.

• Whether any of the testimony will need to be translated.

• Ability of the witness to travel.

• Feasibility of taking a perpetuation deposition.

• Availability of quality telecommunications equipment and service.

When telephone testimony is permitted, the industrial appeals judge presiding at the hearing will swear in the witness testifying by phone as if the witness appeared live at the hearing. For rules relating to telephone deposition testimony, see WAC 263-12-117.

AMENDATORY SECTION (Amending WSR 10-14-061, filed 6/30/10, effective 7/31/10)

WAC 263-12-116 Exhibits. (1) Whenever possible, exhibits should be submitted on paper 8 1/2" x 11" in size. A larger version may be shown to the judge or witness for purpose of demonstration and a smaller version marked and offered as the exhibit.

(2) Exhibits containing audio, video, or other electronic material may be submitted on a CD, DVD, flash drive, or similar device, subject to the following conditions:

• The party seeking to present the audio/video/electronic material at a hearing must provide the appropriate equipment for hearing/viewing the material.

• If the party submitting the material for presentation at a hearing does not provide the equipment needed, the material will not be heard or viewed during the hearing, but the exhibit may be marked into evidence and ruling reserved.

(3) The board will not accept any hazardous exhibit. A hazardous exhibit is an exhibit that:

(a) Threatens the health and safety of persons handling the exhibit, including exhibits having potentially toxic, explosive, or disease-carrying characteristics.

(b) Threatens the security of the board's electronic equipment or network. Nonexclusive examples of hazardous exhibits include:

• Biohazards (bodily fluid samples, bloody clothing).

• Used medical implements or devices (surgical screws, cables, plates, pins, prosthetic devices).

• Corrosive or toxic substances.

• Controlled substances (prescription drugs).

• Potential airborne contaminants (asbestos, silica).

• Flammable, explosive, or reactive materials.

• Live ammunition, firearms, knives, and other weapons.

(((~~(3)~~))) (4) Photographs, videotapes, or other facsimile representations may be used to demonstrate the existence, quantity, and physical characteristics of hazardous evidence consistent with this rule.

(((~~(4)~~))) (5) If a party is uncertain whether a proposed exhibit conforms to this rule or is not able to bring the necessary equipment to the hearing, that party must request a conference ((~~for~~)) with the judge at least fourteen days before submitting the exhibit, asking the judge to make a determination of conformity ((~~at least fourteen days before submitting the exhibit~~)) or to provide assistance in making the exhibit accessible at the proceeding.

AMENDATORY SECTION (Amending WSR 10-14-061, filed 6/30/10, effective 7/31/10)

WAC 263-12-117 Perpetuation depositions. (1) **Evidence by deposition.** The industrial appeals judge may permit or require the perpetuation of testimony by deposition, subject to the applicable provisions of WAC 263-12-115. Such ruling may only be given after the industrial appeals judge gives due consideration to:

(a) The complexity of the issues raised by the appeal;

(b) The desirability of having the witness's testimony presented at a hearing;

(c) The costs incurred by the parties in complying with the ruling; and

(d) The fairness to the parties in complying with the ruling.

(2) **Telephone depositions:** When testimony is taken by perpetuation deposition, it may be taken by telephone if all parties agree. The industrial appeals judge may permit the parties to take the testimony of a witness by telephone deposition over the objection of a party after weighing the following nonexclusive factors:

• The need of a party to observe a witness's demeanor.

• Difficulty in handling documents and exhibits.

• The number of parties participating in the deposition.

• Whether any of the testimony will need to be translated.

• Ability of the witness to travel.

• Availability of quality telecommunications equipment and service.

If a perpetuation deposition is taken by telephone, the court reporter transcribing the deposition is authorized to swear in the deponent, regardless of the deponent's location within or outside the state of Washington.

(3) The industrial appeals judge may require that depositions be taken and published within prescribed time limits. The time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when the industrial appeals judge allocates costs to parties or their representatives.

(((~~(3)~~))) (4) The party filing a deposition must submit the deposition in a written format as well as an electronic format in accordance with procedures established by the board. Exhibits to the deposition do not have to be filed electronically but a legible hard copy must accompany the paper transcription of the deposition. If the deposition is not transcribed in a reproducible format it may be excluded from the record.

(((~~(4)~~))) (5) **Procedure at deposition.** Unless the parties stipulate or the industrial appeals judge determines otherwise all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions:

(a) That all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition and if not raised at such time shall be deemed waived((~~:~~)).

(b) That all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition((~~:~~)).

(c) That the deposition be published without necessity of further conference or hearing at the time it is received by the industrial appeals judge((~~:~~)).

(d) That all motions, including offers to admit exhibits and objections raised at the time of the deposition, shall be ruled upon by the industrial appeals judge in the proposed decision and order((~~; and~~)).

(e) That the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being retyped into the record.

AMENDATORY SECTION (Amending WSR 11-23-154, filed 11/22/11, effective 12/23/11)

WAC 263-12-052 Contents of claim resolution structured settlement agreement. A claim resolution structured settlement agreement shall be submitted electronically with a signed copy of the agreement. ((~~The agreement shall contain the following information:~~)) If the worker is not represented by an attorney, the agreement shall contain all of the following information. If the worker is represented by an attorney, the agreement does not need to include the information requested in subsections (6) through (9) of this section:

(1) The names and mailing addresses of the parties to the agreement;

(2) The date of birth of the worker;

(3) The date the claim was received by the department or the self-insured employer, and the claim number;

(4) The date of the order allowing the claim and the date the order became final;

(5) The payment schedule and amounts to be paid through the claim resolution structured settlement agreement;

(6) The nature and extent of the injuries and disabilities of the worker and the conditions accepted and segregated in the claim;

(7) The life expectancy of the worker;

(8) Other benefits the worker is receiving or is entitled to receive and the effect that a claim resolution structured settlement agreement may have on those benefits;

(9) The marital or domestic partnership status of the worker;

(10) The number of dependents, if any, the worker has;

(11) A statement that:

(a) The worker knows that he/she has the right to:

(i) Continue to receive all the benefits for which they are eligible under this title((~~:~~));

(ii) Participate in vocational training if eligible((~~:~~)); or

(iii) Resolve their claim with a structured settlement;

(b) All parties have signed the agreement. If a state fund employer has not signed the agreement, a statement that:

(i) The cost of the settlement will no longer be included in the calculation of the employer's experience factor used to determine premiums((~~:~~)); or

(ii) The employer cannot be located((~~:~~)); or

(iii) The employer is no longer in business((~~:~~)); or

(iv) The employer failed to respond or declined to participate after timely notice of the claim resolution settlement process provided by the department;

(c) The parties are seeking approval by the board of the agreement;

(d) The agreement binds parties with regard to all aspects of the claim except medical benefits;

(e) The periodic payment schedule is equal to at least twenty-five percent but not more than one hundred fifty percent of the average monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;

(f) The agreement does not set aside or reverse an allowance order;

(g) The agreement does not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim;

(h) The agreement does not subject any department funds covered under the title to any responsibility or burden without prior approval from the director or his/her designee;

(i) The unrepresented worker or beneficiary of a self-insured employer was informed that he/she may request that the office of the ombudsman for self-insured injured workers provide assistance or be present during the negotiations;

(j) The claim will remain open for treatment or that the claim will be closed;

(k) The worker will either be required to or not be required to demonstrate aggravation of accepted conditions as contemplated by RCW 51.32.160 if the worker applies to reopen the claim;

(l) The parties understand and agree to the terms of the agreement;

(m) The parties have entered into the agreement knowingly and willingly, without harassment or coercion;

(n) The parties have represented the facts and the law to each other to the best of their knowledge;

(o) The parties believe that the agreement is reasonable under the circumstances;

(p) The parties know that they may revoke consent to the agreement by providing written notice to the other parties and the board within thirty days after the agreement is approved by the board((~~.~~));

(q) The designation of the party that will apply for approval with the board;

(r) Restrictions on the assignment, if any, of rights and benefits under the claim resolution structured settlement agreement.

AMENDATORY SECTION (Amending WSR 08-01-081, filed 12/17/07, effective 1/17/08)

WAC 263-12-092 Mediation and claim resolution structured settlement agreement conferences. (1) A statement made by any party, representative or other participant in

the course of mediation conducted pursuant to RCW 51.52.095((,)) or a claim resolution structured settlement agreement conference conducted pursuant to RCW 51.04.063, whether verbal or written, is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or reduced to writing and made part of a settlement agreement.

(2) In a proceeding, the following privileges apply:

(a) A ((~~mediation~~)) party may refuse to disclose and may prevent any other person from disclosing a statement;

(b) A mediator or structured settlement conference judge may refuse to disclose and may prevent any other person from disclosing a statement ((~~of~~)) from the mediator or judge; and

(c) A nonparty participant may refuse to disclose and may prevent any other person from disclosing a statement of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation unless otherwise privileged by ((~~section 2 (a)-(c) above~~)) subsection (2) of this section.

(4) Mediation and claim resolution structured settlement agreement conferences are confidential and nonparties may be excluded from the proceedings.

(5) Mediation and claim resolution structured settlement agreement conferences may not be recorded by any type of recording device.

NEW SECTION

WAC 263-12-118 Motions. (1) **Definition.** A party's written or oral request for the board to take action on a pending appeal is a "motion." Motions must be in writing unless made during a hearing before an industrial appeals judge. The board recognizes that there are two basic categories of motions:

(a) **Nondispositive motions.** Nondispositive motions include procedural motions, such as motions for a continuance, an extension of time, or to reopen the record; and discovery motions, such as motions *in limine* or motions to compel or request sanctions.

(b) **Dispositive motions.** Dispositive motions ask for a decision on one or more of the issues in an appeal or to dismiss the appeal. Examples of dispositive motions are motions to dismiss or motions for summary judgment. See WAC 263-12-11801.

(2) **Motions made to the executive secretary.** The procedural rules in subsections (3) through (6) of this section do not apply to motions made to the executive secretary for consideration by the three-member board:

(a) Motions for stay of the order on appeal under RCW 51.52.050 (2)(b). (See WAC 263-12-11802.)

(b) Motions to reconsider or vacate final board orders. (See WAC 263-12-156.)

(c) Motions to set reasonable attorneys' fees under RCW 51.52.120. (See WAC 263-12-165.)

(d) Requests for a stay of abatement pending appeal under RCW 49.17.140 (4)(a) in appeals filed under the Washington Industrial Safety and Health Act. (See WAC 263-12-059.)

(3) **Written motions must be filed separately.** Parties must file motions separately from any pleading or other communication with the board. If a motion is contained in another pleading, the first page must clearly indicate in bold print that a motion is contained therein. See WAC 263-12-01501 (1)(a) for information about motions that must be filed with the board at its headquarters in Olympia.

(4) **Oral motions.** Any party may bring an oral motion during a hearing, unless prohibited from doing so at the industrial appeals judge's discretion. The industrial appeals judge may provide an opportunity for other parties to respond to any oral motion. The industrial appeals judge may require that an oral motion also be submitted in writing and may provide an opportunity for written response.

(5) **Responses to nondispositive motions.** Any party who opposes a written nondispositive motion may file a written response within five business days after the motion is served, or may make an oral or written response at such other time as the industrial appeals judge may set.

(6) **Argument.** All nondispositive motions will be ruled on without oral argument, unless oral argument is requested by the parties and approved by the industrial appeals judge, or at the discretion of the industrial appeals judge. Any party may request oral argument by placing "ORAL ARGUMENT REQUESTED" prominently on the first page of the motion or responsive pleading. The time and date for hearing on the motion shall be scheduled in advance by contacting the judicial assistant for the assigned industrial appeals judge.

NEW SECTION

WAC 263-12-11801 Motions that are dispositive—Motion to dismiss; motion for summary judgment; voluntary dismissal. (1) **Motion to dismiss.**

(a) **General.** A party may move to dismiss another party's appeal on the asserted basis that the notice of appeal fails to state a claim on which the board may grant relief. The board will consider the standards applicable to a motion made under CR 12 (b)(6) of the Washington superior court's civil rules. Examples of other grounds for a motion to dismiss include, but are not limited to, a lack of jurisdiction, failure to present evidence when due, and failure to present a prima facie case.

(b) **Time for filing motion to dismiss.** A motion to dismiss for lack of jurisdiction should be filed as early as possible to avoid unnecessary litigation. In all cases other than appeals under the Washington Industrial Safety and Health Act, a motion to dismiss for failure to present evidence when due may be made if the appealing party fails to appear at an evidentiary hearing held pursuant to due and proper notice. A motion to dismiss for failure to present a prima facie case may be made at any time prior to closure of the record.

(c) **Response.** A party who opposes a written motion to dismiss may file a response within ten days after service of the motion, or at such other time as may be set by the industrial appeals judge. The industrial appeals judge may allow oral argument.

(2) **Motion for summary judgment.**

(a) **General.** A party may move for summary judgment of one or more issues in the appeal if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits or declarations conforming to the requirements of RCW 9A.72.085, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the industrial appeals judge will consider the standards applicable to a motion made under CR 56 of the Washington superior court's civil rules.

(b) **Oral argument.** All summary judgment motions will be decided after oral argument, unless waived by the parties. The assigned industrial appeals judge will determine the length of oral argument allowed. Summary judgment motions must be heard more than fourteen calendar days before the hearing on the merits unless leave is granted by the industrial appeals judge. The time and date for hearing shall be scheduled in advance by contacting the judicial assistant for the assigned industrial appeals judge.

(c) **Dates for filing.** The deadlines to file and serve a motion for summary judgment and opposing and reply documents shall be as set forth in CR 56 unless the industrial appeals judge establishes different deadlines in the litigation order.

(3) **Motion for voluntary dismissal - General.** The party who filed the appeal may move to have the appeal voluntarily dismissed in accordance with CR 41(a) at any time.

NEW SECTION

WAC 263-12-11802 Employer's motion for a stay of the order on appeal. (1) **General.** Any employer may move for a stay of the department order on appeal, in whole or in part, as provided in RCW 51.52.050 (2)(b). The board will grant the motion to stay if the moving party demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order on appeal.

(2) **Time for filing.** As set forth in RCW 51.52.050 (2)(b), a motion filed by the employer for a stay of benefits pursuant to RCW 51.52.050 must be filed within fifteen days of the board order granting the appeal.

(3) **Motion must be filed separately.** An employer must file a motion for a stay of the order on appeal separately from any pleading or other communication with the board and must note "MOTION FOR STAY OF BENEFITS" prominently on the first page of the motion.

(4) **Expedited review.** The board will conduct an expedited review of the department claim file as it existed on the date of the department order on appeal. The board will issue a final decision on the motion for stay of benefits within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later.

(5) **Appeal to superior court.** The board's final decision on the motion for stay of benefits may be appealed to superior court in accordance with RCW 51.52.110.

WSR 14-21-069
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Nursing Home Administrators)
[Filed October 10, 2014, 8:59 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 246-843-231 Temporary practice permits, proposing the revisions to the current rule to (1) update requirements for issuance of a temporary practice permit to applicants of a nursing home administrator (NHA) license for the interim placement only at a specific facility; and (2) create a new category of temporary practice permit for applicants for NHA permanent licensure who have met all license requirements but are waiting for completion of a fingerprint-based criminal background check.

Hearing Location(s): Department of Health, Point Plaza East, Conference Room 153, 310 Israel Road S.E., Tumwater, WA 98501, on December 5, 2014, at 9:30 a.m.

Date of Intended Adoption: December 5, 2014.

Submit Written Comments to: Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by December 5, 2014.

Assistance for Persons with Disabilities: Contact Kendra Pitzler by November 26, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update current rule language for NHAs who want to practice for a short time in Washington and add a subsection that creates a new category of temporary practice permit for NHA applicants of permanent licensure required to have a national fingerprint-based criminal background check. The national background check process is lengthy and has caused licensing delays that affect the public's access to health care. To receive the permit, the applicant must meet all NHA licensing requirements and qualifications.

Reasons Supporting Proposal: In 2008, 4SHB 1103 (chapter 134, Laws of 2008) passed authorizing national fingerprint-based criminal background checks for those situations where a background check in RCW 18.130.064 was inadequate. It also authorized the secretary to issue a temporary practice permit to applicants meeting all other license requirements but must have a national background check conducted. The rule (1) reduces the barriers for out-of-state licensed applicants who otherwise meet all licensing requirements; (2) improves the public's access to health care; and (3) makes the language consistent.

Statutory Authority for Adoption: RCW 18.52.061, 18.130.064, and 18.130.075.

Statute Being Implemented: RCW 18.52.061, 18.130.064, and 18.130.075.

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

Name of Proponent: Board of nursing home administrators, department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Kendra Pitzler, Department of Health, P.O. Box 47852,

Olympia, WA 98504-7852, (360) 236-4723; Implementation: Robert McLellan, P.O. Box 47860, Olympia, WA 98504-7860, (360) 236-4604; and Enforcement: Martin Mueller, P.O. Box 7850, Olympia, WA 98504-7850, (360) 236-4600.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(g)(ii), a small business economic impact statement is not required for proposed rules that adopt, amend, or repeal a filing or related process requirement for applying to an agency for a license or permit.

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 (5)(c). This rule amends a process requirement for making application to an agency for a license or permit.

September 30, 2014
Blake T. Maresh
Executive Director
Board of Nursing Home Administrators

AMENDATORY SECTION (Amending WSR 00-01-072, filed 12/13/99, effective 1/13/00)

WAC 246-843-231 Temporary practice permits. ((~~(1) A temporary practice permit may be issued for a period up to six months. A temporary practice permit holder is not eligible for a subsequent permit. A temporary practice permit shall be valid only for the specific nursing home for which it is issued and shall terminate upon the permit holder's departure from the nursing home, unless otherwise approved by the board. An applicant shall meet the following criteria:~~

~~(a) Submit temporary permit fee and application form approved by the secretary for initial credential;~~

~~(b) Submit verification from each state in which currently licensed that applicant is currently licensed and in good standing as a nursing home administrator in that state;~~

~~(c) Have a written agreement for consultation with a Washington state licensed nursing home administrator.~~

~~(2) Subsection (1)(b) of this section does not apply if the applicant is an administrator of a religious care facility acting under a limited licensed described in RCW 18.52.071.~~)) (1) **Temporary practice permit for applicants seeking licensure for interim placement at specific facilities.**

(a) A temporary practice permit may be issued to an applicant who meets the following conditions:

(i) Holds an unrestricted active license in another state;

(ii) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(iii) There are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card.

(b) The temporary practice permit allows the applicant to work in the state of Washington as a nursing home administrator during the time specified on the permit. The temporary practice permit grants the applicant a license to practice within the full scope of practice as a nursing home administrator with the following conditions:

(i) A temporary practice permit is valid only for the specific nursing home for which it is issued unless otherwise approved by the board;

(ii) A temporary permit holder shall consult with a Washington state licensed nursing home administrator with whom they have a written agreement for consultation.

(c) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when one of the following occurs:

(i) The permit holder departs from the nursing home, unless otherwise approved by the board;

(ii) One hundred eighty days after the temporary practice permit is issued.

(d) To receive a temporary practice permit, the applicant must:

(i) Submit fees and a completed application for the permit;

(ii) Submit verification from each state in which the applicant is currently licensed and is in good standing as a nursing home administrator; and

(iii) Submit a written agreement for consultation with a Washington state licensed nursing home administrator.

(2) **Temporary practice permit for applicants seeking permanent licensure.**

(a) A temporary practice permit may be issued to an applicant who meets the following conditions:

(i) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards to those in Washington;

(ii) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(iii) There are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card.

(b) The temporary practice permit allows the applicant to work in the state of Washington as a nursing home administrator during the time specified on the permit. The temporary practice permit grants the applicant a license to practice within the full scope of practice as a nursing home administrator with the following conditions:

(c) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when one of the following occurs:

(i) The department of health issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for license;

(ii) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or

(iii) One hundred eighty days after the temporary practice permit is issued.

(d) To receive a temporary practice permit, the applicant must:

(i) Submit fees and a completed application for licensure as a nursing home administrator;

(ii) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check;

(iii) Provide verification of having an active unrestricted license as a nursing home administrator from another state that has substantially equivalent licensing standards in Washington; and

(iv) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Because this is a brand new facility type that currently does not exist, there are no existing ESF small businesses that will be impacted by these rules. Instead, the only small businesses that would be affected are those who choose to be licensed as this new facility type. Licensing requirements are set out in chapter 388-107 WAC. These rules add ESF as an option for clients.

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)(v), rules the content of which is explicitly and specifically dictated by statute.

October 8, 2014
Katherine I. Vasquez
Rules Coordinator

WSR 14-21-073
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed October 10, 2014, 2:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-109.

Title of Rule and Other Identifying Information: The department is amending chapter 388-106 WAC, Long-term care services, to add enhanced services facilities.

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 December 9, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 10, 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 5:00 p.m., December 9, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 26, 2014, TTY (360) 664-6178, or (360) 664-6092, or by e-mail Kildaja@ dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to add enhanced services facilities (ESF) as a service provider under the residential support waiver. The rules identify the scope of services and client eligibility and make minor edits regarding this facility type.

Reasons Supporting Proposal: These amendments add additional service options by including ESF.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sandy Robertson, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2576.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community options program entry system (COPES)** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

(4) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

(5) **Program of all-inclusive care for the elderly (PACE)** is a medicaid/medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

(6) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

(7) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

(8) **Medical care services** is a state-funded program authorized under RCW 74.09.035. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

(9) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

(10) **Private duty nursing** is a medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

(11) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

(12) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

(13) **Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-850 WAC.

(14) **Nursing facility.**

(15) **New Freedom consumer directed services (NFCDS)** is a medicaid waiver program authorized under RCW 74.39A.030.

(16) **Residential support** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in a licensed and contracted enhanced services facility or in a licensed adult family home with a contract to provide specialized behavior services.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0030 Where can I receive services? You may receive services:

(1) In your own home.

(2) In a residential facility, which includes licensed:

(a) Adult family homes, as defined in RCW 70.128.010.

(b) Assisted living facilities. Types of licensed and contracted ((~~[boarding homes]~~)) ((~~[~~))assisted living facilities((~~]~~)) include:

(i) Assisted living facilities, as defined in WAC 388-110-020;

(ii) Enhanced adult residential care facilities, as defined in WAC 388-110-020;

(iii) Enhanced adult residential care facilities-specialized dementia care, as defined in WAC 388-110-020;

(iv) Adult residential care facilities, as defined in WAC 388-110-020; and

(c) Enhanced services facility, ((~~when available,~~)) as defined in RCW 70.97.010(12) and chapter 388-107 WAC.

(3) In a nursing home, as defined in WAC 388-97-005.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0040 Who can provide long-term care services? The following types of providers can provide long-term care services:

(1) Individual providers (IPs), who provide services to clients in their own home. IPs must meet the requirements outlined in WAC 388-71-0500 through 388-71-05640.

(2) Home care agencies that provide services to clients in their own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-335 WAC and contracted with area agency on aging.

(3) Residential providers, which include licensed adult family homes, enhanced services facilities ((~~(when available)~~)), and assisted living facilities, that contract with the department to provide assisted living, adult residential care, and enhanced adult residential care services (which may also include specialized dementia care).

(4) Providers who have contracted with the department to perform other services.

(5) In the case of New Freedom consumer directed services (NFCDS), additional providers meeting NFCDS HCBS waiver requirements contracting with a department approved provider of fiscal management services.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0120 What is the payment rate that the department will pay the provider if I receive personal care services in a residential facility? The department publishes rates and/or adopts rules to establish how much the department pays toward the cost of your care in a residential facility.

(1) For COPES, MPC, medical care services, RCL, and new freedom programs, the department assigns payment rates to the CARE classification group. Under these programs, payment for care in a residential facility corresponds to the payment rate assigned to the classification group in which the CARE tool has placed you.

(2) ((~~When the service is available, the~~)) The enhanced services facility rate is determined by legislative action and appropriation.

(3) The rate for adult family homes with a specialized behavior support contract is based on the CARE classification group and an add-on amount, which is negotiated through the collective bargaining process.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0336 What services may I receive under the residential support waiver? You may receive the following services under the residential support waiver:

(1) Adult family homes with a specialized behavior support contract will provide personal care, supportive services, ((~~nurse delegation,~~)) supervision in the home and community, and 24-hour on-site response staff;

(2) Enhanced services facilities provide personal care, supportive services, supervision in the home and community, and twenty-four hour on-site response staff;

(3) Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000, when the items are:

(a) Medically necessary under WAC 182-500-0005; and

(b) Necessary: for life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility.

(((~~(3)~~))) (4) Client support training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(((~~(4)~~))) (5) Nurse delegation, as allowed in RCW 18.79.260, when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; ((~~and~~))

(c) Services are provided in compliance with WAC 246-840-930((~~.~~)); and

(d) It is in addition to, and does not replace, the services required by the department's contract with the residential facility.

(((~~(5)~~))) (6) Skilled nursing, when the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility.

(((~~(6)~~))) (7) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you, your providers, and your caregivers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0344 How do I pay for residential support waiver services? Depending on your income and resources, you may be required to pay participation toward the cost of your care, as outlined in WAC 182-515-1505. If you have nonexempt income that exceeds the cost of residential support services, you may retain the difference. If you are receiving services ((~~in an adult family home with a specialized behavior support contract~~)) under the residential support waiver you must use your income to pay for your room and board and services. You are allowed to keep some of your income for personal needs allowance (PNA). The department determines the amount of PNA that you may keep. The department pays the facility for the difference between what you pay and the department-set rate for the facility. The department pays the residential care facility from the first day of service through the:

(1) Last day of service when the medicaid resident dies in the facility; or

(2) Day of service before the day the medicaid resident is discharged.

WSR 14-21-078
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed October 13, 2014, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-109.

Title of Rule and Other Identifying Information: Collision reporting threshold.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue S.E., Olympia, WA 98504-2600, on November 25, 2014, at 8:00 a.m.

Date of Intended Adoption: November 26, 2014.

Submit Written Comments to: Heather Anderson, WSP Criminal Records Division, P.O. Box 42619, Olympia, WA 98504-2619, e-mail heather.anderson@wsp.wa.gov, fax (360) 534-2070, by November 24, 2014.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by November 14, 2014, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes would increase the accident threshold to $1000 based on the United States City Average Consumer Price Index for all Urban Consumers for Motor Vehicle Body Work from the Bureau of Labor Statistics as provided by the office of financial management.

Reasons Supporting Proposal: Update current language to coincide with changes in the index over time.

Statutory Authority for Adoption: RCW 46.52.030.

Statute Being Implemented: RCW 46.52.030.

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

Name of Agency Personnel Responsible for Drafting: Heather Anderson, P.O. Box 42619, Olympia, WA 98504-2619, (360) 534-2103; Implementation and Enforcement: Criminal Records Division, P.O. Box 42619, Olympia, WA 98504-2619, (360) 534-2103.

No small business economic impact statement has been prepared under chapter 19.85 RCW. It is not anticipated that these proposed changes would have a more than minor impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules will implement changes to coincide with the United States City Average Consumer Price Index for all Urban Consumers for Motor Vehicle Body Work from the Bureau of Labor Statistics and is not considered significant as defined in RCW 34.05.328.

October 13, 2014
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 00-10-092, filed 5/2/00, effective 5/3/00)

WAC 446-85-010 Accident-reporting threshold. Beginning January 1, ((~~2000~~)) 2015, the accident-reporting threshold for property damage accidents ((~~shall~~)) will be ((~~seven hundred~~)) one thousand dollars.

WSR 14-21-082
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed October 13, 2014, 10:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-110.

Title of Rule and Other Identifying Information: Chapter 204-36 WAC, Authorized emergency vehicle permits.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue, Olympia, WA 98504-2600, on November 25, 2014, at 9:00 a.m.

Date of Intended Adoption: November 26, 2014.

Submit Written Comments to: Melissa Van Gorkom, WSP Equipment and Standards Section, P.O. Box 42600, e-mail wsprules@wsp.wa.gov, fax (360) 596-4015, by November 24, 2014.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by November 14, 2014, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will likely include but may not be limited to: Updating current language for clarification to include the addition of definitions; clarification with regard to the overall process which may include additional documentation for permitting and clean up to the existing language; ability for electronic processing of applications; adding requirements for conducting traffic control.

Reasons Supporting Proposal: Provide clarification regarding the process. Clearly articulate restrictions and requirements which will reduce liability and increase public safety.

Statutory Authority for Adoption: RCW 46.37.194.

Statute Being Implemented: RCW 46.37.194.

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

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Melissa Van Gorkom, GA Building, P.O. Box 42600, Olympia, WA 98504, (360) 596-4017; and Enforcement: Washington State Patrol, GA Building, P.O. Box 42600, Olympia, WA 98504, (360) 594-4000.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The Washington state patrol equipment and standards review (ESR) unit is proposing amendments to chapter 204-36 WAC, Authorized emergency vehicle permits.

The purpose of the proposed amendments are [is] to update the current language for clarification regarding the authorized emergency vehicle permit process, include the ability for electronic processing and add outline [of] necessary insurance and training requirements.

The proposed amendments to this chapter include:

- Addition of definitions for an authorized emergency vehicle, digital signature, electronic record, funeral escort and funeral establishment.
- Adding language which would require a copy of the title of the vehicle(s) and proof of insurance. Insurance coverage must be at least $100,000 for liability per occurrence to protect against vehicle damage and $250,000 for liability, bodily injury or property damage per occurrence.
- Adding language that requires all registered owners of a personal vehicle to be approved operators under the permit.
- Adds clarification regarding approval from the patrol for geographic areas listed in the permit and authority for jurisdictions to outline restrictions for use of emergency equipment within their jurisdiction.
- Adds language to allow for digital signatures and electronic submission and processing of permits.
- Provides clarification with regard to the application process for renewals and the addition of a vehicle or driver to a permit.
- Adds a requirement to maintain a permanent daily log or record of all uses of emergency vehicles authorized under the permit the log must include the day/time of operation, operator's name, vehicles used, location of operation and reason for use. Requires the log be available to a law enforcement officer or the equipment standards until [unit] of the patrol upon request.

- Adds requirements for funeral escorts to:
  - Provide notice of each escort to the jurisdictions if requested.
  - Comply with WAC 308-330-466 regarding funeral processions. Adds the following requirements in order to provide traffic control as provided under WAC 308-330-466:
    → Operators conducting traffic control must be certified flaggers.
    → All flaggers must:
      ■ Be at least twenty-one years of age.
      ■ Have a valid driver's license with the proper endorsement for the vehicle they intend to operate.
      ■ Be able to hear and speak well enough to conduct normal verbal conversation with another person at a distance of five feet with or without hearing aid.
      ■ Be able to meet the vision requirements to obtain an unrestricted license, except that the restriction of corrective lenses enabling the applicant to meet the vision requirements is an acceptable restriction.
      ■ Have a certificate/card carried with them at all times during the event and presented to law enforcement if requested.
    → Must use traffic control requirements outlined in the MUTCD.
    → Must wear high-visibility safety apparel while preforming traffic control.
    → Must have commercial insurance or business use exemption from the insuring company to provide escort services and provide proof of such insurance annual [annually] as part of the application.
    → Must have special event permit issues [issued] by Washington state department of transportation (WSDOT) or local jurisdiction, if necessary.
    → May only hold an intersection if the lead vehicle in the escort lawfully entered the intersection and only for a period of time to allow the remaining vehicles to proceed through the intersection. If the procession lasts longer than three minutes the flagger will hold the procession to allow other motor vehicles and pedestrians to cross.
- Adds clarifying language with regard to the use of a siren in accordance with RCW 46.37.380.
- Adds a requirement for an operator, company or organization to notify the patrol within thirty days of any collision or violation that occurred involving a vehicle listed under the permit if the collision/violation occurred while the vehicle is being used under the scope of the permit or pertains to unlawful use of emergency equipment. Such violations or failure to notify the patrol may be cause for suspension or revocation of the permit.
- Provides clarification regarding the ability to install a signal preemptive device restricting installation if the applicant does not have the authority to operate under RCW 46.61.035 and been approved to use the equipment by the jurisdiction they intend to operate in.
- Adds class B felony within the last seven years and class C felony within the last five years to the list of disqualifiers for operators.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—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. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

The ESR unit has analyzed the proposed rule amendments and has determined that small businesses may be impacted by these changes, with some costs that may considered "more than minor" and disproportionate to some small businesses.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: Since the proposed amendments "make significant amendments to a policy or regulatory program" under RCW 34.05.328 (5)(c)(iii), ESR has determined the proposed rules to be "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(d), ESR has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

INDUSTRY ANALYSIS: ESR is responsible for certifying all applications for an authorized emergency vehicle permit in the state of Washington. As part of its monitoring, ESR keeps a current database that identifies all permit holders. Since internal industry information can be obtained at a more accurate level than is required by chapter 19.85 RCW, it is unnecessary to conduct an industry analysis using the four-digit standard industrial classification (SIC) codes.

ESR has determined that there are twenty-eight existing permit holders (public, private and for-profit) that meet the criteria for small businesses under RCW 19.85.020.

INVOLVEMENT OF SMALL BUSINESSES: All twenty-eight permit holders were invited to provide suggestions with regard to the rules beginning in June 2014. A stakeholder meeting was held on September 8, 2014, where the suggestions submitted were discussed by the group. Language was developed and sent to all stakeholders following the meeting on September 12, 2014, along with a small business impact survey so that stakeholders have an opportunity to be further involved in writing the proposed rules and in ascertaining the costs associated with proposed rule changes.

COST OF COMPLIANCE: The major cost(s) anticipated by small businesses for proposed rule changes are as follows:

TITLE AND PROOF OF INSURANCE REQUIREMENTS:

- All passenger vehicles in the state of Washington are required to carry proof of insurance so there should not be a cost associated with the requirement to have insurance for any passenger vehicle currently authorized. However, since motorcycles are not currently required by Washington state law to have insurance, the patrol recognizes that there could be a cost associated with requiring insurance for a motorcycle under this process if the motorcycle was not previously

insured. Therefore, companies that currently use motorcycles were asked whether or not the motorcycles currently used under the permit are insured as part of the stakeholder meeting and survey. The response from two of the companies indicated that they already had insurance.

- The patrol also recognizes that there will be a minimal cost associated with providing a copy of the title and proof of insurance for each vehicle. The assumption is that both pieces of information could be copied on one piece of paper (front and back) which would cost approximately $0.14 per copy/vehicle. So the impact for this requirement for current permit holders ranges from $0.14-$6.30 based on the number of vehicles x cost of the paper to copy the vehicle information. The cost for this impact is further mitigated by the language which allows for these documents to be submitted electronically. By scanning and e-mailing the documents the company could eliminate the cost of the paper for the copies at which point the only impact would be the time necessary to scan and submit the documents.

Subject	Costs per Year	First Year	Subsequent Years
Copy of title and proof of insurance	Approximately $0.14 per copy/vehicle. The impact for current permit holders ranges from $0.14-$6.30	Yes	Yes

TRAFFIC CONTROL REQUIREMENTS: Cost for training/certification and equipment required under the amendments for escorting if the company intends to provide traffic control.

- The cost for an individual to take the flagger certification training through the Evergreen Safety Council is $85. The certification is good for three years so the cost associated with this requirement would be approximately $28.33 per year for an employee of a company to be certified. It will be up to each company as to how many certified flaggers the [they] feel are necessary to have on staff for the purpose of their business so the potential cost to the business will likely range depending on this determination. If all current operators were to undergo this training the cost for the current companies with permits would range from $340 to $1,785.
- A reflective vest meeting the ANSI II requirements as outlined in the proposed rules cost $13.45. To outfit all current drivers under permits which currently provide funeral escorts the cost would range from $53.80-$282.45 for each company.
- A standard 18 inch stop and slow paddle costs anywhere from about $30-$50. For the purpose of the estimates provided herein the patrol will use the median cost of $40 for a standard paddle. The optional roll-up stop and slow paddle costs about $100. The number of paddles required for each event will be based on the size of the event and number of flaggers that may be necessary for traffic control on the route being used. The cost for this equipment is a one time cost for the company. If the company chose to outfit each vehicle currently authorized with a paddle, the cost for a standard paddle would range from $160-$400.
- The agency anticipates that there may be a cost for companies to gain the proper insurance as required in the proposed rules. The companies present at the stakeholder meeting in September indicated that they all currently hold insurance. While these stakeholders represented two of the largest companies out of five funeral escort companies currently permitted, the agency realizes that there may be companies that do not currently hold insurance. To try to gage impact a survey was sent to all current permit holders along with the language. Only one response to the survey was received and that response didn't indicate an impact with regard to traffic control requirements; therefore the agency has provided a rough estimate based on insurance coverage received by other groups that have gone through the WSDOT special permit process. The cost for event insurance with coverage of $1,000,000 per month ranges depending on company and number of events. The estimate being used for the purpose of this document is $500 per year.

Subject	Costs per Year	First Year	Subsequent Years
Training	$85 per operator for flagger certification which averages about $28.33 per year. Cost per company would range from $340-$1,785 each year.	Yes	Yes (renewal every three years)
Reflective vest	$13.45 per vest. To equip each operator currently permitted the cost per company ranges from $53.80-$282.45.	Yes	No
Stop and slow paddles	$40 per stop and slow paddle. To equip each vehicle currently permitted the cost per company ranges from $160-$400.	Yes	No
Escort special permit application	The permit application required under this rule for state routes and interstates is free and available online through WSDOT.	Yes	Yes
Escort insurance	$500 per year.	Yes	Yes
Total	$553.80–$2,467.45 per company to come into compliance. $340-$1,785 every three years thereafter to maintain certification.	Yes	Yes

RECORDKEEPING: The agency anticipates that there may be a cost for companies to record their activity under the permit. The companies present at the stakeholder meeting in September indicated that they all currently log responses either through their dispatch or in each vehicle. While this group is representative of each type of permit on file, the agency realizes that there may be companies that are not cur-

rently tracking activity. To try to gage impact a survey was sent to all current permit holders along with the language. One response to the survey was received with regard to this issue, but the impact to this company was mitigated in a minor language change prior to filing the language as the change eliminated the need to print new forms. The agency has also provided a rough estimate for simply tracking by hand in each vehicle the responses which would cost approximately $75 (notebook ($20), pen ($15 for a dozen) and employee time ($40/hour – this is an estimate which may be high/low depending on the company)) a year estimating an average of thirty calls a month at approximately two minutes to record each. So if there is an average of ten operators that would equal $750.

First Year (Fee Per Operator)	First Year Total Per Average Number of Operators (10) for Affected Permit Holders	Other Fees in First Year	Subsequent Total Per Permit Holder Based on the Average Number of Operators (10)
$130.52-$322.38	$1,283.94-$3,223.75 per permit holder	$500	$1,590.14-$3,041.30 per permit holder

Disproportionate Economic Impact Analysis: When there are more than minor costs to small businesses as a result of proposed rule changes, the Regulatory Fairness Act requires an analysis to be done comparing these expenses between small businesses and ten percent of the largest businesses. The costs identified with outcome evaluations for small businesses would be considered by ESR to be "more than minor."

ESR looked at the possible disproportionate impact of this requirement on small businesses, as compared to ten percent of the largest businesses. However, the costs outlined appear to impact each business proportionally based on the number of operators and vehicles they have. In addition, the proportion of the rules that pertain to traffic control do not impact the largest businesses regulated under the permitting process as they do not provide funeral escort services. Consequently, it is not possible to accurately delineate and compare all costs between small businesses and ten percent of the largest agencies. In its desire to be fair to small businesses and to meet the intent of the law, however, ESR has outlined ways to mitigate expenses for small businesses in meeting the new requirement.

Mitigating Expenses for Outcome Evaluations: ESR has proposed a plan to mitigate some expenses for small businesses impacted by these proposed rules. ESR will use one or more of the following to help small businesses meet the requirement for outcome evaluations:

ESR has added language into the proposed rules that would allow for electronic filing of documents and applications. This should minimize the cost of making copies of documents and reduce/eliminate any mailing costs currently incurred by the companies.

Summary of Benefits: The benefit for the proposed rule changes is to increase the oversight of the existing permit to ensure that companies are operating within the scope of their permit.

Under current law there are no provisions that allow for a funeral escort company to provide traffic control for a procession. The proposed rules would outline the ability for a funeral escort company to provide traffic control under certain circumstances. The circumstances outlined in these proposed changes are of benefit to the company in allowing a legal means of providing traffic control and ensuring some safety measures for their operators who conduct these duties. There is also a benefit in public safety by providing uniformity in traffic control operations which are already outlined under Washington state law.

JOBS CREATED OR LOST: This regulation is not a requirement for small businesses, it is an optional service that a small business can choose to provide if it chooses to apply and follow the guidelines outlined in chapter 204-36 WAC. Therefore, it is not anticipated that the requirements set forth in the current proposal will cause jobs to be lost as a result of small businesses complying with these rules.

CONCLUSION: ESR has given careful consideration to the impact on small businesses of proposed rules in chapter 204-36 WAC, Authorized emergency vehicle permit. In accordance with the Regulatory Fairness Act, chapter 19.85 RCW, ESR has analyzed impacts on small businesses and outlined the reasons for the costs and ways that cost may be mitigated.

Please contact Melissa Van Gorkom if you have any questions at (360) 596-4017.

A copy of the statement may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail WSPRules@wsp.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail WSPRules@wsp.wa.gov.

October 13, 2014
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 09-09-091, filed 4/16/09, effective 5/17/09)

WAC 204-36-010 Promulgation. The state patrol hereby adopts the following regulations relating to the issuance of an authorized emergency vehicle permit, for those vehicles not already authorized under state or federal statute.

AMENDATORY SECTION (Amending WSR 09-09-091, filed 4/16/09, effective 5/17/09)

WAC 204-36-020 Definitions. (1) Applicant means any person, firm, corporation or municipal corporation desiring to have a vehicle registered as an authorized emergency vehicle pursuant to RCW 46.37.194.

(2) Authorized emergency vehicle has the same meaning as defined in RCW 46.04.040.

(3) Burial, removal, or transit permit means a form, approved and supplied by the state registrar of vital statistics

as described in chapter 70.58 RCW, identifying the name of the deceased, date and place of death, general information, disposition and registrar and sexton information.

(4) Digital signature means a signature in electronic format that is either a digitized image of a wet signature or a graphical representation of a handwritten signature which is under the exclusive control of the person signing the document.

(5) Electronic record means a record generated, communicated, received or stored by electronic means for use in an information system or for transmission from one information system to another.

(6) Funeral escort means a funeral procession provided in accordance with WAC 308-330-466 for the purpose of transporting human remains under a burial, removal, or transit permit issued in accordance with chapter 70.58 RCW for disposition, except as otherwise provided by law, in a cemetery or building dedicated exclusively for religious purposes.

(7) Geographic area means the city, county, state routes or interstate roads on which the vehicle will be operated under the authorized emergency vehicle permit if approved.

((~~(2)~~)) (8) Operator or driver. The term operator and the term driver, as used herein, means every person who is in actual physical control of an authorized emergency vehicle.

((~~(3)~~)) (9) Operation. The term operation, as used herein, is the driving or moving by any operator or driver upon a public highway of any vehicle that is equipped or has attached thereon any emergency equipment, the installation of which requires an authorized emergency vehicle permit, whether or not the emergency equipment is activated.

((~~(4)~~)) (10) Patrol means the Washington state patrol.

((~~(5)~~)) (11) Primary jurisdiction means lead department who has jurisdiction on the roads that the applicant wishes to use the emergency lighting on.

((~~(6)~~)) (12) Political subdivision means the individual who has authority over the applicant if the applicant is the chief law enforcement officer or fire chief.

AMENDATORY SECTION (Amending WSR 09-09-091, filed 4/16/09, effective 5/17/09)

WAC 204-36-030 Permit requirements. (1) ((~~Any person, firm, corporation or municipal corporation~~)) An applicant desiring to have a vehicle registered as an authorized emergency vehicle pursuant to RCW 46.37.194 must apply for such classification to the ((~~state~~)) patrol on forms provided by the patrol.

(2) The initial applicant must furnish the following information to the patrol:

(a) A description of the specific geographic area in which the vehicle(s) will be used as an authorized emergency vehicle.

(b) A ((~~description of the vehicle, to include, year, make, model, VIN, license number, and registered owner~~)) copy of the registration of the vehicle(s) and proof of insurance.

(i) Each vehicle must be covered with the following minimum insurance coverage:

(A) One hundred thousand dollars of legal liability per occurrence to protect against vehicle damage.

(B) Two hundred fifty thousand dollars for liability, bodily injury or property damage per occurrence.

(ii) Proof of insurance may be provided in one of the following forms:

(A) Copy of the proof of insurance which shows the coverage and terms thereof.

(B) Letter from the underwriter of the insurance outlining the insurance coverage and vehicle(s) covered.

(c) A description of the specific purposes for which the vehicle will be used as an authorized emergency vehicle((~~, funeral escorts, fire response, or other (describe in detail)~~)). This description must include each function for the vehicle, including, but not limited to, funeral escorts, fire response, traffic control, incident response, roadside safety and security patrols.

(d) ((~~An explanation of the nature and scope of the duties, responsibilities and authority of the vehicle operator which necessitate the need for vehicle to have an authorized emergency vehicle permit. This description must include the authority under statute~~)) Citation(s) to the statutory authority for the ((~~operator~~)) applicant to perform the functions listed under the purpose(s) for which the applicant is applying for the permit.

(e) A description of the emergency equipment to be used if the permit is granted.

(f) A listing of the names((~~, addresses, birthdates~~)) birth dates, operator's license numbers and other identifying data as may be prescribed on the application form by the patrol, of all persons who will use the vehicle(s) as an authorized emergency vehicle, ((~~and~~)) a completed applicant fingerprint card, and associated fee to process the fingerprint cards for each person who operates the vehicle(s).

(g) Certification from each primary jurisdiction identified in (a) of this subsection that the vehicle is to be used as described. Such certification must ((~~be~~)):

(i) Be made by:

((~~(i)~~)) (A) The chief law enforcement officer if the applicant is a law enforcement or security officer, or has funeral home, coroner, ambulance or other nonfire related duties. For the patrol, the chief law enforcement officer will be the district commander that oversees the geographic area(s) under subsection (a) of this section.

((~~(ii)~~)) (B) The fire chief if the vehicle is to be used only for firefighting purposes.

((~~(iii) If the person making the application is the chief law enforcement officer or the fire chief of the jurisdiction, certification must be made by~~)) (C) The chief executive officer of the political subdivision of the jurisdiction, if the applicant is the chief law enforcement officer or fire chief of the jurisdiction.

((~~The certification must~~)) (ii) State that a need exists in the jurisdiction for the vehicle to be used as described and that the certifier knows of no reason why the application should be denied.

(iii) Include the original or digital signature of all jurisdictions required under this chapter.

(h) The chief law enforcement officer or fire chief may outline restrictions for use within the jurisdiction as part of his or her approval.

(i) Upon satisfactory application the patrol may issue an emergency vehicle permit or permits which, when carried as required, are valid for one year or until ((~~expiration or cancellation~~)) revocation or suspension as prescribed in WAC 204-36-070.

(3) Renewal applications must:

(a) Be received by the patrol prior to the expiration date of the permit on forms provided by the patrol.

(b) Include all authorizations from the required jurisdictions for the geographic areas listed in the renewal application.

(c) Only list vehicle(s) and equipment for which inspection paperwork has been received by the patrol and a vehicle permit as outlined in WAC 204-36-060 has been issued by the patrol.

(d) Only list operators that have already undergone the background check required under this chapter and been approved by the patrol to operate the vehicle(s) listed.

(e) Include proof of insurance for the vehicle(s) listed under the renewal application.

(f) Include any other documentation required under this chapter.

(4) Upon satisfactory application for renewal the patrol may issue an emergency vehicle permit or permits which, when carried as required, are valid for one year or until revocation or suspension as prescribed in WAC 204-36-070.

(5) Original or renewal applications may be mailed to the patrol at Equipment and Standards Unit, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600 or the electronic record of the application may be e-mailed to equipment@wsp.wa.gov. Upon receipt, the patrol will review the documentation and may issue a permit if the applicant meets all the requirements outlined in this chapter. The authorized emergency vehicle permit must be carried in the vehicle at all times, and presented upon request to law enforcement.

AMENDATORY SECTION (Amending WSR 10-01-110, filed 12/17/09, effective 1/17/10)

WAC 204-36-040 Permit limitations. (1) A vehicle authorized by the patrol must not be used as an authorized emergency vehicle except as follows:

(a) Only by the operators named in the ((~~original or amended application~~)) permit approved by the patrol. ((~~If the applicant wishes to add or remove operator(s) from the permit, such request must be made to the patrol in writing.~~))

(b) Only with the equipment described in the ((~~original or amended application~~)) permit approved by the patrol.

(c) Only within the geographic area(s) ((~~described in the original or amended application~~)) approved by the ((~~patrol.~~)) chief law enforcement officer or fire chief outlined in WAC 204-36-030 and in accordance with any restrictions outlined in the permit approved by the patrol. Each authorized emergency vehicle permit holder must maintain a permanent daily log or record of all uses of emergency vehicles authorized under this chapter for at least two years. The records will be made available to any law enforcement officer or the equipment standards unit of the patrol upon request. The records must include the following items:

(i) Date and time of operation.

(ii) Operator(s) name(s).

(iii) Identification of the vehicle(s) operated by the VIN or license plate number. A vehicle number issued by the agency or company may be used provided that such number is provided to the patrol as part of the application and linked to the VIN or license plate number of the vehicle.

(iv) Location of operation which must include all geographic areas operated in with emergency equipment for that operation.

(v) Reason for operation.

(d) Only for the purposes set forth in the ((~~original or amended application~~)) permit approved by the patrol.

(e) If being used for escort services, may be used only for funeral escorts. Funeral escorts must:

(i) Provide notice of each escort to the primary jurisdictions, if required to do so by the jurisdiction under the permit.

(ii) Comply with WAC 308-330-466 regarding funeral processions. To conduct traffic control as provided under WAC 308-330-466 the procession must:

(A) Have all operators involved in traffic control certified as a Washington state certified flagger. A certified flagger card must be carried at all times during the escort and presented to law enforcement if requested. All operators involved in the funeral escort must undergo a training briefing for the event which must include:

(I) Certified flaggers role during the escort;

(II) Flagging safety and requirements for any traffic control conducted to include any sign or vehicle placement during the escort;

(III) Familiarization of the route used for the escort;

(IV) Communications and signals to be used between flaggers during the escort; and

(V) Other hazards specific to the route or escort.

(B) Only use certified flaggers who must:

(I) Be at least twenty-one years of age.

(II) Possess a valid driver's license with the proper endorsements for the vehicle which they intend to operate as an escort vehicle.

(III) Be able to speak and hear well enough to conduct verbal conversation in English with another person.

(IV) Have in his or her possession a flagger certification card and the flagger's picture or a statement that says "valid with photo ID."

(C) Use traffic controls according to the guidelines and recommendations of the *Manual on Uniform Traffic Control Devices* (MUTCD) as currently modified and adopted by the Washington state department of transportation. To view or print a copy of the MUTCD go to http://wsdot.wa.gov/ and type MUTCD into the search box. If flagger signaling is required it must be conducted according to the currently adopted MUTCD and this chapter.

(D) Wear the following high-visibility safety apparel when performing traffic control:

(I) A safety vest, shirt or jacket labeled as meeting the ANSI/ISEA 107-2004 or 107-2010 standard performance for class 2 or 3 risk exposure. A copy of this standard is available at https://www.safetyequipment.org.

(II) The apparel must be orange-red, florescent yellow-green, or a combination of the two as defined in the ANSI standard.

(E) Have the following permit(s):

(I) A letter of acknowledgment or letter of agreement through the Washington state department of transportation (WSDOT) if the route includes state routes or interstates. Applications for conducting escorts using state highways or interstates must be submitted at least three business days in advance using the application for special events on state highways application available on the WSDOT web site www.wsdot.wa.gov.

(II) A permit, letter of acknowledgment or agreement from the necessary local jurisdiction(s), if required, to perform traffic control functions for routes that include city streets or county roads. Funeral escort companies are responsible for checking with the necessary jurisdictions to ensure necessary documentation is acquired prior to operation under the authorized emergency vehicle permit.

(F) Only hold an intersection if the lead vehicle in the escort lawfully entered the intersection and only for a period of time necessary to allow the remaining vehicles to proceed through the intersection. If a procession lasts longer than three minutes at an intersection, the flagger(s) will hold the procession to allow other road users to cross.

(G) A certified flagger will be held liable if an accident occurs due to his or her instructions.

(iii) Employers and/or responsible contractors must make sure that flaggers:

(A) Stand either on the shoulder adjacent to the road user being controlled or in the closed lane prior to stopping road users. A flagger must only stand in the lane being used by moving road users after the road users have been stopped. For the purpose of this section road user means a vehicle operator, bicyclist, or pedestrian within a public roadway, including workers in temporary traffic control zones.

(B) Are positioned so that they are not exposed to traffic approaching them from behind. If this is not possible, then the employer and/or responsible contractor must develop and use a method to ensure that the flagger has adequate visual warning of traffic and equipment approaching from behind.

(C) Do not use devices that may distract the flagger vision, hearing or attention.

(D) Do not work more than three hours without a rest period of at least ten minutes.

(E) Are not assigned other duties while engaged in traffic control activities.

(iv) Have commercial insurance in Washington state or business use exemption from the insuring company to provide escort services with a motor vehicle. Proof of such insurance must be provided to the patrol annually as part of the application as outlined in WAC 204-36-030.

(v) Not park or stand, irrespective of the provisions of chapter 46.61 RCW or violate any traffic laws unless lawfully conducting traffic control as outlined in this chapter.

(2) If an authorized emergency vehicle is used for private purposes, or for purposes in an area or by an operator other than as set forth in the application, all emergency equipment which is exposed to public view must be removed or covered with an opaque hood, and must not be operated during such period of time.

(3) The issuance of an emergency vehicle permit does not relieve the driver from the duty to drive with regard for the safety of all persons, nor will such provisions protect the driver from the consequences of his or her disregard for the safety of others and does not grant police authority to the operators of said vehicle. Any inappropriate or misuse of authorized emergency vehicles may result in criminal or civil liability as well as ((~~cancellation~~)) suspension or revocation of the emergency vehicle permit.

(4) A siren may only be used when responding to an emergency call or when reasonably necessary to warn pedestrians and other drivers of the approach of the authorized emergency vehicle in accordance with RCW 46.37.380.

(5) No permit will be issued to an applicant if the name of the applicant portrays the applicant as a public law enforcement agency, or in association with a public law enforcement agency, or includes the word "police" or "patrol."

((~~(5)~~)) (6) An operator under an approved emergency vehicle permit will not be allowed to display or use any of the following:

(a) A name that includes the word "police," "patrol," or "law enforcement," or other word which portrays the individual or business as a public law enforcement agency.

(b) A sign, shield, marking, accessory or insignia on their uniform, clothing or equipment to imply that he or she is a law enforcement officer.

((~~(6)~~)) (7) Subsections ((~~(4)~~)) (5) and ((~~(5)~~)) (6) of this section do not apply:

(a) If the applicant is recognized under Washington state or federal law as a municipal corporation and certifies to the patrol that the applicant is a municipal corporation; or

(b) If the sign, shield, marking, accessory or insignia on the operator's uniform or equipment is issued by a public law enforcement agency; the operator is employed by the public law enforcement agency that the operator is representing with the sign, shield, marking, accessory or insignia on the operator's uniform or equipment; and the operator is approved to operate the vehicle by that public law enforcement agency for the purposes outlined under the authorized emergency vehicle permit.

((~~(7) All current permit holders as of December 31, 2010, will have until January 1, 2012, to make changes necessary to comply with the requirements outlined in subsections (4) and (5) of this section.~~))

AMENDATORY SECTION (Amending WSR 09-09-091, filed 4/16/09, effective 5/17/09)

WAC 204-36-050 Equipment requirements. (1) Authorized emergency vehicles must be:

(a) Conventional passenger cars, vans, pickups, or similar vehicles;

(b) Conventionally painted; and

(c) Legally equipped in conformance with RCW 46.37.190(1) with at least one lamp capable of displaying a red light visible from at least five hundred feet in normal sunlight and a siren capable of giving an audible signal. Such

equipment must not be installed prior to obtaining approval of the application and issuance of a temporary certificate of approval for the vehicle(s) by the patrol. To be considered approved equipment for use under the provisions of this section, all devices must meet the criteria established in RCW 46.37.320. In descending order of preference, these are:

(i) Conformance to current standards and specifications of the Society of Automotive Engineers, or; if none

(ii) Certified for compliance by any recognized organization or agency such as, but not limited to, the American National Standards Institute, the Society of Automotive Engineers, or the American Association of Motor Vehicle Administrators.

(2) Authorized emergency vehicles must not:

(a) Be equipped with blue lamps.

(b) Display commercial signs, posters, or pictures.

(c) Carry or attach to the outside of the vehicle equipment, not related to the emergency nature of the vehicle.

(d) Display or use any name that includes the word "police" or "law enforcement" or other word which portrays the individual or business as a public law enforcement agency.

(3) Authorized emergency vehicles may, in addition to the required equipment, have:

(a) An amber or white lamp on their vehicle as outlined under WAC 204-21-130;

(b) Signal preemptive device as outlined in RCW 46.37.-670;

(c) Flashing or strobing headlamps;

provided that such equipment is listed on the application and approved by each primary jurisdiction and the patrol.

AMENDATORY SECTION (Amending WSR 09-09-091, filed 4/16/09, effective 5/17/09)

WAC 204-36-060 ((~~Procedure.~~)) Vehicles. (1) If the patrol approves the initial application, the applicant will be issued a ((~~certificate of approval~~)) temporary permit for the vehicle(s) which will be valid for thirty days, during which time the emergency equipment may be installed for the purpose of inspection. After installation of the emergency equipment, the applicant must bring the vehicle to a district or detachment office of the ((~~Washington state~~)) patrol to be examined ((~~to determine if it is of an approved type~~)) by any patrol officer to verify the location, make, model, and color (if applicable) of the emergency equipment. A ((~~Washington state~~)) patrol officer will certify the results of this examination on a form prescribed and provided by the patrol and the applicant must file the form with the ((~~State~~)) patrol((~~, E.S.R.~~)). Original forms may be mailed to the patrol at the Equipment and Standards Unit, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600 or the electronic record of the form may be e-mailed to equipment@wsp.wa.gov. Upon the patrol's receipt of such certification, the patrol will review the documentation and may issue a vehicle permit, which must be carried in the vehicle at all times, and expires when ((~~the vehicle is~~)):

(a) The vehicle is removed from the permit; or

(b) The authorized emergency vehicle permit is terminated by the applicant or by the patrol; or

(c) ((~~An~~)) The authorized emergency vehicle permit ((~~which will~~)) expires, which will be one year from the date of issuance thereof.

(2) ((~~The patrol may refuse to approve the application, certificate or permit or in the case of an application which lists multiple operators may refuse to approve any single operator if the applicant/operator:~~

~~(a) Has been convicted of a felony during the ten years preceding the date of the application provided the felony for which the applicant was convicted directly relates to the specific occupation, trade, vocation, or business for which the certificate or permit is sought;~~

~~(b) Has ever been convicted of any class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the state of conviction;~~

~~(c) Has been convicted of DUI as defined in chapter 46.61 RCW, or convicted of a similar offense regardless of the state of conviction, within the last seven years;~~

~~(d) Has been convicted of reckless driving, or a hit and run, within the last seven years;~~

~~(e) Has been convicted of a gross misdemeanor within the last five years;~~

~~(f) Has been convicted of any misdemeanor within the last year; or~~

~~(g) Must register as a sex offender.~~

~~Crimes referenced in this section are as defined in the criminal code as they exist at the time of the violation, as they now exist or may later be amended in the state of Washington. Out-of-state convictions for offenses will be classified according to the comparable offense definitions and sentences provided by Washington law.~~

~~(3) Each approved authorized emergency vehicle permit will be good for a period of one year. A renewal application must be filed with the patrol on forms prescribed by the patrol as outlined in WAC 204-36-030.~~

~~(a) A request to add drivers to a permit may be made, in writing to the patrol, at any time. If there is a request for new drivers to be added to the permit, the drivers will not be allowed to operate the vehicles as outlined in the permit until they have been approved to do so by the patrol. Any request to add or remove drivers from a permit must be made to the patrol in writing.~~

~~(b) A request to add vehicles to a permit may be made, in writing to the patrol, at any time. If there is a request for new vehicles to be added to the permit, a certificate of approval for the vehicles will be issued granting a thirty-day period within which the equipment must be installed and inspected by the patrol. Once the inspection paperwork is received by the patrol it will be reviewed, and if approved, the patrol will issue a vehicle permit which must be carried in the vehicle at all times.~~

~~(i) No additional equipment other than the equipment outlined on the permit is authorized for use under the permit.~~

~~(ii) If additional equipment other than that approved under the vehicle permit must be installed, a new certificate of equipment must be filled out for the vehicle and the patrol must inspect and approve such equipment issuing a new vehicle permit prior to its use under the authorized emergency vehicle permit.~~

~~(4) The certificate of approval and when issued, the permit, including all endorsements for change of conditions as provided in WAC 204-36-030, must be carried in the authorized emergency vehicle at all times, and must be displayed on request to any law enforcement officer.~~)) A request to add a new vehicle may be made at any time in writing to the patrol and must include the vehicle year, make, model, VIN, license number, and registered owner. The requests will be processed as outlined in subsection (1) of this section. A vehicle will not be allowed to operate under a permit until the vehicle has been authorized by the patrol and issued a vehicle permit under the applicant's authorized emergency vehicle permit.

(3) A request to add new equipment to a vehicle with a current permit may be made at any time in writing to the patrol. If additional equipment other than that approved under the vehicle permit must be installed:

(a) A new certificate of equipment must be filled out for the vehicle and the patrol must inspect and approve such equipment issuing a new vehicle permit prior to use of the vehicle under the authorized emergency vehicle permit.

(b) The applicant may be required to obtain authorization from each primary jurisdiction of the geographic areas listed in the authorized emergency vehicle permit if the additional equipment was not previously authorized under the current permit.

(4) A copy of the vehicle permit and current authorized emergency vehicle permit(s) the vehicle is authorized under must be carried in the vehicle at all times and presented to law enforcement upon request.

NEW SECTION

WAC 204-36-065 Operators. (1) Operators must have a valid driver's license properly endorsed to operate the vehicle(s) listed under the permit.

(2) The patrol may refuse to approve the application, certificate or permit, or in the case of an application which lists multiple operators may refuse to approve any single operator if the applicant/operator:

(a) Has been convicted of a felony during the ten years preceding the date of the application provided that the felony for which the applicant was convicted directly relates to the specific occupation, trade, vocation, or business for which the certificate or permit is sought;

(b) Has ever been convicted of the following:

(i) Any class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the date or state of conviction; or

(ii) Any class B felony within the last seven years; or

(iii) Any class C felony within the last five years; or

(iv) A DUI as defined in chapter 46.61 RCW, or convicted of a similar offense regardless of the state of conviction, within the last seven years; or

(v) Reckless driving, or a hit and run, within the last seven years; or

(vi) A gross misdemeanor within the last five years; or

(vii) Any misdemeanor within the last year; or

(c) Must register as a sex or kidnapping offender.

Crimes referenced in this section are as defined in the criminal code as they exist at the time of the violation, as they now exist or may later be amended in the state of Washington. Out-of-state convictions for offenses will be classified according to the comparable offense definitions and sentences provided by Washington law.

(3) A request to add an operator to a permit may be made in writing to the patrol at any time. If there is a request for a new operator to be added to the permit, the operator will not be allowed to drive the vehicles as outlined in the permit until they have been approved to do so by the patrol.

AMENDATORY SECTION (Amending WSR 09-09-091, filed 4/16/09, effective 5/17/09)

WAC 204-36-070 Revocation or suspension. (1) Violation of any of these regulations will be grounds for suspension or revocation of the authorized emergency vehicle permit. Notice will be furnished to the applicant at least twenty days prior to the effective date of such suspension or revocation. The notice will describe the grounds for the order and will furnish the applicant an opportunity to be heard within the twenty-day period. The notice may provide for immediate suspension of the permit prior to any hearing, or the patrol may suspend the permit following the hearing but prior to final determination, if it is necessary to do so in the interests of the public health, safety or welfare.

(2) The chief law enforcement officer, or fire chief if the vehicle is to be used for firefighting purposes, of each primary jurisdiction in which the vehicle is operated as an authorized emergency vehicle may revoke his or her certification of the vehicle by notifying the patrol in writing or by electronic notice of such revocation and his or her reasons therefore. Following notice to the applicant and an opportunity to be heard, the permit may be invalidated by the patrol.

(3) Failure to maintain the required insurance coverage will result in suspension or revocation of the vehicle permit by the patrol and may result in action taken on the authorized emergency vehicle permit.

(4) An operator, the company or organization holding the authorized emergency vehicle permit must notify the patrol of any motor vehicle collision or violation that occurred involving a vehicle listed under the authorized emergency vehicle permit if such collision or violation occurred while being used under the scope of the permit.

(a) Such notification must be received by the patrol within thirty days of the collision or violation. Failure to provide notification within the specified time frame may result in suspension or revocation of the permit, an individual operator or vehicle permit.

(b) Collisions or citations may be cause for the patrol to suspend or revoke an authorized emergency vehicle permit, an individual operator or vehicle permit.

(5) Falsification of any information in the permit will result in suspension or revocation of the permit, an individual operator or vehicle permit.

(6) Mailing by certified mail or sending by electronic record of any notice or correspondence by the patrol to the last physical or e-mail address of the applicant shown on ((~~his~~

~~application~~)) the permit will be sufficient service of notice as required by this chapter.

(7) The patrol may refuse an application from any company whose permit has been revoked until such time that the company can show that corrective action has been taken to remedy the circumstances for which the authorized emergency vehicle permit was revoked under this chapter.

NEW SECTION

WAC 204-36-080 Exception for federal law enforcement agency vehicles. A vehicle of a federal law enforcement entity is recognized as an authorized emergency vehicle which need not be classified, registered, or authorized by the patrol.

WSR 14-21-103
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed October 15, 2014, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-100.

Title of Rule and Other Identifying Information: WAC 314-55-010 Definitions, 314-55-015 General information about marijuana licenses, 314-55-020 Marijuana license qualifications and application process, 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license?, 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?, 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?, 314-55-079 What is a marijuana retailer and what are the requirements and fees related to a marijuana retailer license?, 314-55-083 What are the security requirements for a marijuana licensee?, 314-55-085 What are the transportation requirements for a marijuana licensee?, 314-55-086 What are the mandatory signs a marijuana licensee must post on a licensed premises?, 314-55-089 What are the tax and reporting requirements for marijuana licensees?, 314-55-095 Marijuana servings and transaction limitations, 314-55-097 Marijuana waste disposal—Liquids and solids, 314-55-102 Quality assurance testing, 314-55-103 Good laboratory practices checklist, 314-55-104 Marijuana processor license extraction requirements, 314-55-105 Packaging and labeling requirements, 314-55-210 Will the liquor control board seize or confiscate marijuana, useable marijuana, and marijuana infused products?, 314-55-515 What are the penalties if a marijuana license holder violates a marijuana law or rule?, 314-55-520 Group 1 violations against public safety, 314-55-525 Group 2 regulatory violations, 314-55-530 Group 3 violations, and 314-55-535 Group 4 marijuana producer violations.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on December 3, 2014, at 10:00 a.m.

Date of Intended Adoption: December 10, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by December 3, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by December 3, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules are needed to clarify new legislation that passed in the 2014 legislative session, ESHB 2304, that made changes to the marijuana processor and retailer licenses. Current marijuana rules need to be revised to provide additional clarity to marijuana applicants and licensees.

Reasons Supporting Proposal: This is a new industry in the state of Washington. Applicants and licensees need to know the requirements and activities allowed under the marijuana licenses.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.342, 69.50.345, 69.50.325, 69.50.535.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

October 15, 2014
Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-010 Definitions. Following are definitions for the purpose of this chapter. Other definitions are in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the board as a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

(5) "Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

(6) "Employee" means any person performing services on a licensed premises for the benefit of the licensee.

(7) "Financier" means any person or entity, other than a banking institution, that has made or will make an investment in the licensed business. A financier can be a person or entity that provides money as a gift, loans money to the applicant/business and expects to be paid back the amount of the loan with or without interest, or expects any percentage of the profits from the business in exchange for a loan or expertise.

(((~~7~~))) (8) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

(((~~8~~))) (9) "Intermediate product" means marijuana flower lots or other material lots that have been converted by a marijuana processor to a marijuana concentrate or marijuana-infused product that must be further processed prior to retail sale.

(10) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

(((~~9~~))) (11) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(((~~10~~))) (12) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(((~~11~~))) (13) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(((~~12~~))) (14) "Member" means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice-president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

(((~~13~~))) (15) "Paraphernalia" means items used for the storage or use of usable marijuana, marijuana concentrates, or marijuana-infused products, such as, but not limited to, lighters, roach clips, pipes, rolling papers, bongs, and storage containers. Items for growing, cultivating, and processing marijuana, such as, but not limited to, butane, lights, and chemicals are not considered "paraphernalia."

(16) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, ((~~and~~)) insecticides, and cloning agents.

(((~~14~~))) (17) "Perimeter" means a property line that encloses an area.

(((~~15~~))) (18) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

(((~~16~~))) (19) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

(((~~17~~))) (20) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

(((~~18~~))) (21) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

(((~~19~~))) (22) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government.

(((~~20~~))) (23) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

(((~~21~~))) (24) "Secondary school" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

(((~~22~~))) (25) "Selling price" means the total amount of consideration. No deduction from the total amount of consideration is allowed for the following:

(a) The seller's cost of the property sold;

(b) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(c) Charges by the seller for any services necessary to complete the sale, other than delivery charges; and

(d) Delivery charges.

(26) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-015 General information about marijuana licenses. (1) A person or entity must meet certain qualifications to receive a marijuana license, which are continuing qualifications in order to maintain the license.

(2) All applicants and employees working in each licensed establishment must be at least twenty-one years of age.

(3) Minors restricted signs must be posted at all marijuana licensed premises.

(4) A marijuana license applicant may not exercise any of the privileges of a marijuana license until the board approves the license application.

(5) The board will not approve any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence.

(6) The board will not approve any marijuana license for a location on federal lands.

(7) The board will not approve any marijuana retailer license for a location within another business. More than one license could be located in the same building if each licensee has their own area separated by full walls with their own entrance. Product may not be commingled.

(8) Every marijuana licensee must post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(9) In approving a marijuana license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a marijuana license.

(10) A marijuana processor or retailer licensed by the board shall conduct the processing, storage, and sale of marijuana-infused products using sanitary practices and ensure marijuana infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(11) Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on the licensed premises.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-020 Marijuana license qualifications and application process. Each marijuana license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the marijuana license application. The application requirements for a marijuana license include, but are not necessarily limited to, the following:

(1) Per RCW 69.50.331, the board shall send a notice to cities and counties, and may send a notice to tribal governments or port authorities regarding the marijuana license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(2) The board will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(3) The board will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the board and submission of fingerprints to a vendor approved by the board. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check. Financiers must meet the three month residency requirement.

(4) The board will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(5) The board may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

(6) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license requested.

(7) Per RCW 69.50.331 (1)(b), all applicants applying for a marijuana license must have resided in the state of Washington for at least three months prior to application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a marijuana license must be formed in Washington. All members must also meet the three month residency requirement. Managers or agents who manage a licensee's place of business must also meet the three month residency requirement.

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

Producer	Processor	Retailer
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	Transportation of product
Destruction of waste product	Destruction of waste product	Destruction of waste product
Description of growing operation including growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process	Description of the types of products to be processed at this location together with a complete description of all equipment to include all marijuana infused edible processing facility equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

After obtaining a license, the license holder must notify the board in advance of any substantial change in their operating plan. Depending on the degree of change, prior approval may be required before the change is implemented.

(10) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

(12) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license? (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale ((~~to~~)) marijuana retailers. A marijuana processor license also allows the licensee to process and package marijuana into intermediate products for sale at wholesale to other marijuana processors.

(2) A marijuana processor is allowed to blend tested ((~~useable~~)) usable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) A marijuana processor licensee must obtain approval from the liquor control board for all marijuana-infused products, labeling, and packaging prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the liquor control board for approval.

If the liquor control board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing per chapter 34.05 RCW, Administrative Procedure Act.

(4) Marijuana-infused products in solid form that contain more than one serving must be scored to indicate individual serving sizes, and labeled so that the serving size is prominently displayed on the packaging. Products containing more than one serving must be packaged in a package that remains child resistant after the package is opened.

(a) Marijuana-infused products must be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(b) All marijuana-infused products must state on the label, "This product contains marijuana."

(5) A marijuana processor is limited in the types of food or drinks they may infuse with marijuana to create ((~~an infused edible product.~~)) marijuana-infused solid or liquor products meant to be ingested orally, that may be sold by a marijuana retailer. Marijuana-infused products that are made to be especially appealing to children are prohibited. Marijuana-infused products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.

(a) To reduce the risk to public health, ((~~food defined as~~)) potentially hazardous foods as defined in WAC ((~~246-215-0115(88)~~)) 246-215-01115 may not be infused with marijuana. ((~~These foods are~~)) Potentially hazardous ((~~as they~~)) foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. ((~~The board may designate other food items that may not be infused with marijuana.~~)) Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(((~~4~~))) (b) Other food items that may not be infused with marijuana to be sold in a retail store are:

(i) Any food that has to be acidified to make it shelf stable;

(ii) Food items made shelf stable by canning or retorting;

(iii) Fruit or vegetable juices (this does not include shelf stable concentrates);

(iv) Fruit or vegetable butters;

(v) Pumpkin pies, custard pies, or any pies that contain egg;

(vi) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(vii) Dried or cured meats.

(c) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(d) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(e) Per WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

(f) The liquor control board may designate other food items that may not be infused with marijuana.

(6) The recipe for any ((~~food infused with marijuana to make an edible product~~)) marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana ((~~producer's~~)) processor's licensed premises and made available for inspection by the ((~~WSLCB or their~~)) liquor control board or its designee.

(((~~5~~))) (7) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(((~~6~~))) (8) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(((~~7~~))) (9) A marijuana processor producing a marijuana-infused solid or liquid product meant to be ingested orally in a processing facility as required in WAC 314-55-015(10) must pass a processing facility inspection. Ongoing annual processing facility compliance inspections may be required. The liquor control board will contract with the department of agriculture to conduct required processing facility inspections. All costs of inspections are borne by the licensee and the hourly rate for inspection is sixty dollars. A licensee must allow the liquor control board or their designee to conduct physical visits and inspect the processing facility, recipes and required records per WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice. Failure to pay for the processing facility inspection or to follow the processing facility requirements outlined in this section and WAC 314-55-015 will be sufficient grounds for the board to suspend or revoke a marijuana license.

(10) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana processor application window after the initial evaluation of the applications that are received and processed, and at subsequent times when the board deems necessary.

(((~~8~~))) (11) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(((~~9~~))) (12) Marijuana processor licensees are allowed to have a maximum of six months of their average ((~~useable~~)) usable marijuana and six months average of their total production on their licensed premises at any time.

(((~~10~~))) (13) A marijuana processor must accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license? (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana concentrates, marijuana-infused products, and mari-

juana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) ((~~Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101.~~)) Marijuana-infused products listed in WAC 314-55-077(5) are prohibited for sale by a marijuana retail licensee.

(3) Internet sales and delivery of product to customers is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below their acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(8) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in the transportation rules in WAC 314-55-085.

(9) A marijuana retailer may not accept a return of product that has been opened.

AMENDATORY SECTION (Amending WSR 14-07-116, filed 3/19/14, effective 4/19/14)

WAC 314-55-083 What are the security requirements for a marijuana licensee? The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises. All non-employee visitors to the licensed premises, other than retail store customers, shall be required to hold and properly display an identification badge issued by the licensee at all times while on the licensed premises. A log must be kept and maintained showing the full name of each visitor entering the licensed premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit. All log records must be maintained on the licensed premises for a period of three years and are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the liquor control board or law enforcement officer upon request.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.

(3) **Surveillance system.** At a minimum, a licensed premises must have a complete video surveillance system with minimum camera resolution of 640x470 ((~~pixel and~~)) pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible ((~~and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area. The requirements include image acquisition, video recording, management and monitoring hardware and support systems~~)). All cameras must be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility shall be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously twenty-four hours per day and at a minimum of ten frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the liquor control board or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.

(a) ((~~All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of ingress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points.~~

~~(b) Camera placement shall allow for the clear and certain identification of any individual on the licensed premises.~~

~~(c) All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions. The surveillance system storage device must be secured on-site in a lock box, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.~~

~~(d) All perimeter fencing and gates enclosing an outdoor grow operation must have full video surveillance capable of clearly identifying any activities occurring within twenty feet of the exterior of the perimeter. Any gate or other entry point that is part of the enclosure for an outdoor growing operation must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of the exterior, twenty-four hours a day. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.~~

~~(e) Areas where marijuana is grown, cured or manufactured including destroying waste, shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear,~~

~~unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities at all times.~~

~~(f)~~)) Controlled areas include:

(i) Any area within an indoor, greenhouse or outdoor room or area where marijuana is grown, or marijuana or marijuana waste is being moved within, processed, stored, or destroyed. Rooms or areas where marijuana or marijuana waste is never present are not considered control areas and do not require camera coverage.

(ii) All point-of-sale (POS) areas.

(iii) Twenty feet of the exterior of the perimeter of all required fencing and gates enclosing an outdoor grow operation. Any gate or other entry point that is part of the required enclosure for an outdoor growing operation must be lighted in low-light conditions. A motion detection lighting system may be employed to light the gate area in low-light conditions.

(iv) Any room or area storing a surveillance system storage device.

(b) All marijuana, marijuana concentrates, or marijuana-infused products that are intended to be removed or transported ((~~from marijuana producer to marijuana processor and/or marijuana processor to marijuana retailer~~)) between two licensed premises shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the liquor control board or designees.

(((~~(g) All camera recordings must be continuously recorded twenty-four hours a day. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the board or law enforcement officer upon request.~~))

(4) **Traceability:** To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the board. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts, marijuana-infused products, samples, and marijuana waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the board:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana, marijuana extract, marijuana concentrates, marijuana-infused product, or marijuana waste is to be destroyed;

(d) When usable marijuana, marijuana concentrates, or marijuana-infused products are transported;

(e) Any theft of usable marijuana, marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, seed, plant tissue or other item containing marijuana;

(f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed, a lot or batch of marijuana, marijuana extract, marijuana-infused product, or marijuana waste may be destroyed;

(g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before ((~~a lot~~)) marijuana plants, seeds, plant tissue cultures, or lots of marijuana ((~~is~~)) are transported from a producer to a processor;

(h) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before usable marijuana, marijuana concentrates, or marijuana-infused products are transported from a processor to another processor or to a retailer;

(i) Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happened when a plant is moved from the seed germination or clone area to the vegetation production area;

(j) A complete inventory of all marijuana, seeds, plant tissue, seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract, marijuana concentrates, marijuana-infused products, and marijuana waste;

(k) All point of sale records;

(l) Marijuana excise tax records;

(m) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;

(n) All free samples provided to another licensee for purposes of negotiating a sale;

(o) All samples used for testing for quality by the producer or processor;

(p) Samples containing usable marijuana provided to retailers;

(q) Samples provided to the board or their designee for quality assurance compliance checks; and

(r) Other information specified by the board.

(5) **Start-up inventory for marijuana producers.** Within fifteen days of starting production operations a producer must have all nonflowering marijuana plants physically on the licensed premises. The producer must, within twenty-four hours, record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

(6) **Samples.** Free samples of usable marijuana may be provided by producers or processors, or used for product quality testing, as set forth in this section.

(a) Samples are limited to two grams and a producer may not provide any one licensed processor more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The producer must record the amount of each sample and the processor receiving the sample in the traceability system. The outgoing sample must be recorded on a transport manifest.

(b) Samples are limited to two grams and a processor may not provide any one licensed retailer more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system. The outgoing sample must be recorded on a transport manifest.

(c) Samples are limited to two units and a processor may not provide any one licensed retailer more than six ounces of marijuana infused in solid form per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system. The outgoing sample must be recorded on a transport manifest.

(d) Samples are limited to two units and a processor may not provide any one licensed retailer more than twenty-four ounces of marijuana-infused liquid per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system. The outgoing sample must be recorded on a transport manifest.

(e) Samples are limited to one-half gram and a processor may not provide any one licensed retailer more than one gram of marijuana-infused extract meant for inhalation per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system. The outgoing sample must be recorded on a transport manifest.

(f) Producers may sample one gram of usable marijuana per strain, per month for quality sampling. Sampling for quality may not take place at a licensed premises. Only the producer or employees of the licensee may sample the usable marijuana for quality. The producer must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(g) Processors may sample one unit, per batch of a new edible marijuana-infused product to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employees of the licensee may sample the edible marijuana-infused product. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(h) Processors may sample up to one quarter gram, per batch of a new marijuana-infused extract for inhalation to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employee(s) of the licensee may sample the marijuana-infused extract for inhalation. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(i) The limits described in subsection ((~~(3)~~)) (6) of this section do not apply to the usable marijuana in sample jars that may be provided to retailers described in WAC 314-55-105(8).

(j) Retailers may not provide free samples to customers.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-085 What are the transportation requirements for a marijuana licensee? (1) **Notification of shipment.** Upon transporting any marijuana or marijuana product, a producer, processor, retailer, or certified third-party testing lab shall notify the board of the type and amount and/or weight of marijuana and/or marijuana products being transported, the name of transporter, information about the transporting vehicle, times of departure and expected delivery. This information must be reported in the traceability system described in WAC 314-55-083(4).

(2) **Receipt of shipment.** Upon receiving the shipment, the licensee or certified third-party lab receiving the product shall report the amount and/or weight of marijuana and/or marijuana products received in the traceability system.

(3) **Transportation manifest.** A complete printed transport manifest on a form provided by the board containing all information required by the board must be kept with the product at all times.

(4) **Records of transportation.** Records of all transportation must be kept for a minimum of three years at the licensee's location and are subject to inspection.

(5) **Transportation of product.** Marijuana or marijuana products that are being transported must meet the following requirements:

(a) Only the marijuana licensee, an employee of the licensee, or a certified testing lab may transport product;

(b) Marijuana or marijuana products must be in a sealed package or container approved by the board pursuant to WAC 314-55-105;

(c) Sealed packages or containers cannot be opened during transport;

(d) Marijuana or marijuana products must be in a locked, safe and secure storage compartment that is secured to the inside body/compartment of the vehicle transporting the marijuana or marijuana products;

(e) Any vehicle transporting marijuana or marijuana products must travel directly from the shipping licensee to the receiving licensee and must not make any unnecessary stops in between except to other facilities receiving product;

(f) Live plants may be transported in a fully enclosed, windowless locked trailer, or in a secured area within the inside body/compartment of a van or box truck. A secured area is defined as an area where solid or locking metal petitions, cages, or high strength shatterproof acrylic can be used to create a secure compartment in the fully enclosed van or box truck. The secure compartment in the fully enclosed van or box truck must be free of windows. Live plants may not be transported in the bed of a pickup truck, a sports utility vehicle, or passenger car.

(6) For purposes of this chapter, any vehicle assigned for the purposes of transporting marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products shall be considered an extension of the licensed premises and subject to inspection by enforcement officers of the liquor control board. Vehicles assigned for transportation may be stopped and inspected by a liquor enforcement officer at any licensed location, or while en route during transportation.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-086 What are the mandatory signs a marijuana licensee must post on a licensed premises? (1) **Notices regarding persons under twenty-one years of age** must be conspicuously posted on the premises as follows:

Type of licensee	Sign must contain the following language:	Required location of sign
Marijuana producer, marijuana processor, and marijuana retailer	"Persons under twenty-one years of age not permitted on these premises."	Conspicuous location at each entry to premises.

The board will provide the required notices, or licensees may design their own notices as long as they are legible and contain the required language.

(2) **Signs provided by the board prohibiting opening a package of marijuana or marijuana-infused product in public or consumption of marijuana or marijuana-infused products in public,** must be posted as follows:

Type of premises	Required location of sign
Marijuana retail	Posted in plain view at the main entrance to the establishment.

(3) **The premises' current and valid master license with appropriate endorsements** must be conspicuously posted on the premises and available for inspection by liquor enforcement officers.

(4) Firearms prohibited signs provided by the board must be posted at the entrance of each producer, processor, and retailer licensed location.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees? (1) Marijuana licensees must submit monthly report(s) and payments to the board. The required monthly reports must be:

(a) On a form or electronic system designated by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each marijuana license held; and

(e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the board.

A marijuana producer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale to a licensed marijuana processor or producer.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, other marijuana processors, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana processor licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale of usable marijuana, marijuana concentrates, and marijuana-infused product to a licensed marijuana retailer.

(4) **Marijuana retailer's licensees:** On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana retailer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each retail sale of usable marijuana ((~~or~~)), marijuana concentrates, and marijuana-infused products.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-095 Marijuana servings and transaction limitations. Marijuana dosage and transaction limitations are as follows:

(1) **Single serving.** A single serving of a marijuana-infused product ((~~amounts to~~)) must not exceed ten milligrams active tetrahydrocannabinol (THC), or Delta 9.

(2) **Maximum number of servings.** The maximum number of servings in any one single unit of marijuana-infused product meant to be eaten or swallowed is ten servings or one hundred milligrams of active THC, or Delta 9, whichever is less. A single unit of ((~~marijuana-infused extract for inhalation~~)) marijuana concentrate cannot exceed one gram.

(3) **Transaction limitation.** A single transaction is limited to one ounce of usable marijuana, sixteen ounces of marijuana-infused product in solid form, seven grams of ((~~marijuana-infused extract for inhalation~~)) marijuana concentrate, and seventy-two ounces of marijuana-infused product in liquid form for persons twenty-one years of age and older.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-097 Marijuana waste disposal—Liquids and solids. (1) Solid and liquid wastes generated during marijuana production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.

(2) Wastewater generated during marijuana production and processing must be disposed of in compliance with applicable state and local laws and regulations.

(3) Wastes from the production and processing of marijuana plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC) to determine if those wastes designate as dangerous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it designates as a dangerous waste. If a generator's waste does designate as a dangerous waste, then that waste(s) is subject to the applicable management standards found in chapter 173-303 WAC.

(a) Wastes that must be evaluated against the dangerous waste regulations include, but are not limited to, the following:

(i) Waste from marijuana flowers, trim and solid plant material used to create an extract (per WAC ((~~315-55-104~~)) 314-55-104).

(ii) Waste solvents used in the marijuana process (per WAC ((~~315-55-104~~)) 314-55-104).

(iii) Discarded plant waste, spent solvents and laboratory wastes from any marijuana processing or quality assurance testing.

(iv) Marijuana extract that fails to meet quality testing.

(b) Marijuana wastes that do not designate as dangerous shall be managed in accordance with subsection (4) of this section.

(c) A marijuana plant, usable marijuana, trim and other plant material in itself is not considered dangerous waste as defined under chapter 173-303 WAC unless it has been treated or contaminated with a solvent.

(4) Marijuana waste that does not designate as dangerous waste (per subsection (3) of this section) must be rendered unusable following the methods in subsection (5) of this section prior to leaving a licensed producer, processor, ((~~retail facility,~~)) or laboratory. Disposal of the marijuana waste rendered unusable must follow the methods under subsection (6) of this section.

(a) Wastes that must be rendered unusable prior to disposal include, but are not limited to, the following:

(i) Waste evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."

(ii) Marijuana plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent.

(iii) Solid marijuana sample plant waste possessed by third-party laboratories accredited by the board to test for quality assurance that must be disposed of.

(iv) Other wastes as determined by the LCB.

(b) A producer or processor must provide the board a minimum of seventy-two hours notice in the traceability system described in WAC 314-55-083(4) prior to rendering the product unusable and disposing of it.

(5) The allowable method to render marijuana plant waste unusable is by grinding and incorporating the marijuana plant waste with other ground materials so the resulting mixture is at least fifty percent nonmarijuana waste by volume. Other methods to render marijuana waste unusable must be approved by LCB before implementation.

Material used to grind with the marijuana falls into two categories: Compostable waste and noncompostable waste.

(a) Compostable mixed waste: Marijuana waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:

(i) Food waste;

(ii) Yard waste;

(iii) Vegetable based grease or oils; or

(iv) Other wastes as approved by the LCB.

(b) Noncompostable mixed waste: Marijuana waste to be disposed in a landfill or another disposal method (for example, incinerator) may be mixed with the following types of waste materials:

(i) Paper waste;

(ii) Cardboard waste;

(iii) Plastic waste;

(iv) Soil; or

(v) Other wastes as approved by the LCB.

(6) Marijuana wastes rendered unusable following the method described in subsection (4) of this section can be disposed.

(a) Disposal of the marijuana waste rendered unusable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

(i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.

(ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.

(b) Disposal of the marijuana waste rendered unusable may be managed on-site by the generator in accordance with the standards of chapter 173-350 WAC.

(c) A record of the final destination of marijuana waste rendered unusable.

AMENDATORY SECTION (Amending WSR 14-07-116, filed 3/19/14, effective 4/19/14)

WAC 314-55-102 Quality assurance testing. (1) A third-party testing lab must be certified by the board or their vendor as meeting the board's accreditation and other requirements prior to conducting required quality assurance tests. Certified labs will receive a certification letter from the board and must conspicuously display this letter in the lab in plain sight of the customers. The board can summarily suspend a lab's certification if a lab is found out of compliance with the requirements of WAC 314-55-102.

(2) A person with financial interest in a certified third-party testing lab may not have direct or indirect financial interest in a licensed marijuana producer or processor for whom they are conducting required quality assurance tests. A

person with direct or indirect financial interest in a certified third-party testing lab must disclose to the board by affidavit any direct or indirect financial interest in a licensed marijuana producer or processor.

(3) As a condition of certification, each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director shall meet the following minimum qualifications:

(a) Has earned, from a college or university accredited by a national or regional certifying authority a doctorate in the chemical or biological sciences and a minimum of two years' post-degree laboratory experience; or

(b) Has earned a master's degree in the chemical or biological sciences and has a minimum of four years' of post-degree laboratory experience; or

(c) Has earned a bachelor's degree in the chemical or biological sciences and has a minimum of six years of post-education laboratory experience.

(4) As a condition of certification, labs must follow the most current version of the Cannabis Inflorescence and Leaf monograph published by the *American Herbal Pharmacopoeia* or notify the board what alternative scientifically valid testing methodology the lab is following for each quality assurance test. The board may require third-party validation of any monograph or analytical method followed by the lab to ensure the methodology produces scientifically accurate results prior to them using those standards when conducting required quality assurance tests.

(5) As a condition of certification, the board may require third-party validation and ongoing monitoring of a lab's basic proficiency to correctly execute the analytical methodologies employed by the lab. The board may contract with a vendor to conduct the validation and ongoing monitoring described in this subsection. The lab shall pay all vendor fees for validation and ongoing monitoring directly to the vendor.

(6) The lab must allow the board or their vendor to conduct physical visits and inspect related laboratory equipment, testing and other related records during normal business hours without advance notice.

(7) Labs must adopt and follow minimum good lab practices (GLPs), and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the board. The board or authorized third-party organization can conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(8) The general body of required quality assurance tests for marijuana flowers and infused products may include moisture content, potency analysis, foreign matter inspection, microbiological screening, pesticide and other chemical residue and metals screening, and residual solvents levels.

(9) Table of required quality assurance tests defined in the most current version of the *Cannabis Inflorescence and Leaf* monograph published by the American Herbal Pharmacopoeia.

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Lots of marijuana flowers	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening	Up to 7 grams
Lots of marijuana trim and other material to be used to create marijuana ready to roll mix	1. Moisture content 2. Foreign matter inspection 3. Microbiological screening	Up to 7 grams
Marijuana ready to roll mix	Potency analysis	Up to 7 grams
Concentrate or infused extract (solvent based) ((~~for inhalation~~)) made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity	1. Potency analysis 2. Residual solvent test 3. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Concentrate or infused extract ((~~for inhalation~~)) made with a CO_2 extractor like hash oil	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Concentrate or infused extract ((~~for inhalation~~)) made with ethanol or other approved food grade solvent	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test) 3. Residual solvent test	Up to 2 grams
Concentrate or infused extract (nonsolvent) ((~~meant for inhalation~~)) infused with kief, hashish, or bubble hash	1. Potency analysis 2. Microbiological screening	Up to 2 grams

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Infused edible	1. Potency analysis 2. Microbiological screening	1 unit
Infused liquid like a soda or tonic	1. Potency analysis 2. Microbiological screening	1 unit
Infused topical	1. Potency analysis 2. Microbiological screening	1 unit

(10) Independent testing labs may request additional sample material in excess of amounts listed in the table in subsection (9) of this section for the purposes of completing required quality assurance tests. Labs certified as meeting the board's accreditation requirements may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab and return any unused portion of the samples.

(11) Labs certified as meeting the board's accreditation requirements are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but they must have records to prove all marijuana and marijuana-infused products only for the testing purposes described in WAC 314-55-102.

(12) At the discretion of the board, a producer or processor must provide an employee of the board or their designee samples in the amount listed in subsection (9) of this section or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of metals, and used for other quality assurance tests deemed necessary by the board. All costs of this testing will be borne by the producer or processor.

(13) No lot of usable flower or batch of marijuana-infused product may be sold or transported until the completion of all required quality assurance testing. Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations under their UBI number prior to quality assurance testing.

(14) Any usable marijuana or marijuana-infused product that passed the required quality assurance tests may be labeled as "Class A." Only "Class A" usable marijuana or marijuana-infused product will be allowed to be sold.

(15) If a lot of marijuana flower((~~s~~)) fails a quality assurance test, any marijuana plant trim, leaf and other usable material from the same plants automatically fails quality assurance testing also. Upon approval of the board, a lot that fails a quality assurance test and the associated trim, leaf and other usable material may be used to make a CO_2 or solvent based extract. After processing, the CO_2 or solvent based extract must still pass all required quality assurance tests in WAC 314-55-102.

(16) At the request of the producer or processor, the board may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor.

(17) Labs must report all required quality assurance test results directly into LCB's seed to sale traceability system within twenty-four hours of completion. Labs must also record in the seed to sale traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the licensee.

NEW SECTION

WAC 314-55-103 Good laboratory practice checklist. A third-party testing lab must be certified by the Washington state liquor control board (WSLCB) or its vendor as meeting the board's accreditation and other requirements prior to conducting required quality assurance tests. The following checklist will be used by the board or its vendor to certify third-party testing labs:

ORGANIZATION	Document Reference	Y	N	NA	Comments
1. The laboratory or the organization of which it is a part of shall be an entity that can be held legally responsible.	-	-	-	-	-
2. The laboratory conducting third-party testing shall have no financial interest in a licensed producer or processor for which testing is being conducted.	-	-	-	-	-
If the laboratory is part of an organization performing activities other than testing and/or calibration, the responsibilities of key personnel in the organization that have an involvement or influence on the testing and/or calibration activities of the laboratory shall be defined in order to identify potential conflicts of interest.	-	-	-	-	-

ORGANIZATION	Document Reference	Y	N	NA	Comments
3. The laboratory shall have policies and procedures to ensure the protection of its client's confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results.	-	-	-	-	-
4. The laboratory is responsible for all costs of initial certification and ongoing site assessments.	-	-	-	-	-
5. The laboratory must agree to site assessments every two years to maintain certification.	-	-	-	-	-
6. The laboratory must allow WSLCB staff or their representative to conduct physical visits and check I-502 related laboratory activities at any time.	-	-	-	-	-
7. The laboratory must report all test results directly into WSLCB's traceability system within twenty-four hours of completion. Labs must also record in the traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the customer.	-	-	-	-	-

HUMAN RESOURCES	Document Reference	Y	N	NA	Comments
8. Job descriptions for owners and all employees: Key staff.	-	-	-	-	-
9. Qualifications of owners and staff: CVs for staff on file.	-	-	-	-	-
a. Have technical management which has overall responsibility for the technical operations and the provision of the resources needed to ensure the required quality of laboratory operations.	-	-	-	-	-
b. Documentation that the scientific director meets the requirements of WSLCB rules.	-	-	-	-	-
c. Chain of command, personnel organization/flow chart, dated and signed by the laboratory director.	-	-	-	-	-
d. Written documentation of delegation of responsibilities (assigned under chapter 314-55 WAC as related to quality assurance testing) to qualified personnel, signed and dated by the laboratory director.	-	-	-	-	-
e. Documentation of employee competency: Prior to independently analyzing samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls). Dated and signed by the laboratory director.	-	-	-	-	-
f. Designate a quality manager (however named) who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the quality system is implemented and followed; the quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources.	-	-	-	-	-
10. Written and documented system detailing the qualifications of each member of the staff.	-	-	-	-	-

HUMAN RESOURCES	Document Reference	Y	N	NA	Comments
The need to require formal qualification or certification of personnel performing certain specialized activities shall be evaluated and implemented where necessary.	-	-	-	-	-
11. Standard operating procedure manual that details records of internal training provided by facility for staff. Laboratory director must approve, sign and date each procedure.	-	-	-	-	-
a. Instructions on regulatory inspection and preparedness.	-	-	-	-	-
b. Instruction on law enforcement interactions.	-	-	-	-	-
c. Information on U.S. federal laws, regulations, and policies relating to individuals employed in these operations, and the implications of these for such employees.	-	-	-	-	-
d. Written and documented system of employee training on hazards (physical and health) of chemicals in the workplace, including prominent location of MSDS sheets and the use of appropriate PPE.	-	-	-	-	-
e. Written and documented system on the competency of personnel on how to handle chemical spills and appropriate action; spill kit on-site and well-labeled, all personnel know the location and procedure.	-	-	-	-	-
f. Information on how employees can access medical attention for chemical or other exposures, including follow-up examinations without cost or loss of pay.	-	-	-	-	-
g. Biosafety and sterile technique training.	-	-	-	-	-

STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
12. As appropriate, laboratory operations covered by procedures shall include, but not be limited to, the following:	-	-	-	-	-
a. Environmental, safety and health activities;	-	-	-	-	-
b. Sample shipping and receipt;	-	-	-	-	-
c. Laboratory sample chain of custody and material control;	-	-	-	-	-
d. Notebooks/logbooks;	-	-	-	-	-
e. Sample storage;	-	-	-	-	-
f. Sample preparation;	-	-	-	-	-
g. Sample analysis;	-	-	-	-	-
h. Standard preparation and handling;	-	-	-	-	-
i. Postanalysis sample handling;	-	-	-	-	-
j. Control of standards, reagents and water quality;	-	-	-	-	-
k. Cleaning of glassware;	-	-	-	-	-
l. Waste minimization and disposition.	-	-	-	-	-
13. The following information is required for procedures as appropriate to the scope and complexity of the procedures or work requested:	-	-	-	-	-
a. Scope (e.g., parameters measured, range, matrix, expected precision, and accuracy);	-	-	-	-	-
b. Unique terminology used;	-	-	-	-	-
c. Summary of method;	-	-	-	-	-

STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
d. Interferences/limitations;	-	-	-	-	-
e. Approaches to address background corrections;	-	-	-	-	-
f. Apparatus and instrumentation;	-	-	-	-	-
g. Reagents and materials;	-	-	-	-	-
h. Hazards and precautions;	-	-	-	-	-
i. Sample preparation;	-	-	-	-	-
j. Apparatus and instrumentation setup;	-	-	-	-	-
k. Data acquisition system operation;	-	-	-	-	-
l. Calibration and standardization;	-	-	-	-	-
m. Procedural steps;	-	-	-	-	-
n. QC parameters and criteria;	-	-	-	-	-
o. Statistical methods used;	-	-	-	-	-
p. Calculations;	-	-	-	-	-
q. Assignment of uncertainty;	-	-	-	-	-
r. Forms used in the context of the procedure.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
14. Allocation of space: Adequate for number of personnel and appropriate separation of work areas.	-	-	-	-	-
15. Arrangement of space.	-	-	-	-	-
a. Allows for appropriate work flow, sampling, lab space separate from office and break areas.	-	-	-	-	-
b. Employee bathroom is separate from any laboratory area.	-	-	-	-	-
16. Adequate eyewash/safety showers/sink.	-	-	-	-	-
17. Procurement controls.	-	-	-	-	-
a. The laboratory shall have procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures shall exist for the purchase, receipt and storage of reagents and laboratory consumable materials relevant for the tests and calibrations.	-	-	-	-	-
b. The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned.	-	-	-	-	-
c. Prospective suppliers shall be evaluated and selected on the basis of specified criteria.	-	-	-	-	-
d. Processes to ensure that approved suppliers continue to provide acceptable items and services shall be established and implemented.	-	-	-	-	-
e. When there are indications that subcontractors knowingly supplied items or services of substandard quality, this information shall be forwarded to appropriate management for action.	-	-	-	-	-
18. Utilities.	-	-	-	-	-
a. Electrical:	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
i. Outlets: Adequate, unobstructed, single-use, no multiplug adaptors;	-	-	-	-	-
ii. No extension cords;	-	-	-	-	-
iii. Ground fault circuit interrupters near wet areas.	-	-	-	-	-
b. Plumbing:	-	-	-	-	-
i. Appropriateness of sink usage: Separate for work/personal use;	-	-	-	-	-
ii. Adequate drainage from sinks or floor drains;	-	-	-	-	-
iii. Hot and cold running water.	-	-	-	-	-
c. Ventilation:	-	-	-	-	-
i. Areas around solvent use or storage of waste solvent;	-	-	-	-	-
ii. Vented hood for any microbiological analysis - Class II Type A biosafety cabinet.	-	-	-	-	-
d. Vacuum: Appropriate utilities/traps for prevention of contamination.	-	-	-	-	-
e. Shut-off controls: Located outside of the laboratory.	-	-	-	-	-
19. Waste disposal: Appropriate for the type of waste and compliant with WAC 314-55-097, Marijuana waste disposal—Liquids and solids.	-	-	-	-	-
20. Equipment list.	-	-	-	-	-
Equipment and/or systems requiring periodic maintenance shall be identified and records of major equipment shall include:	-	-	-	-	-
a. Name;	-	-	-	-	-
b. Serial number or unique identification;	-	-	-	-	-
c. Date received and placed in service;	-	-	-	-	-
d. Current location;	-	-	-	-	-
e. Condition at receipt;	-	-	-	-	-
f. Manufacturer's instructions;	-	-	-	-	-
g. Date of calibration or date of next calibration;	-	-	-	-	-
h. Maintenance;	-	-	-	-	-
i. History of malfunction.	-	-	-	-	-
21. Maintenance.	-	-	-	-	-
a. Regular preventive maintenance of equipment demonstration in logbook including, but not limited to: Thermometer calibration, pipette calibrations, analytical balances, and analytical equipment. Documentation of a schedule and reviewed by the laboratory director.	-	-	-	-	-
b. Documentation of curative maintenance in logbook, signed and dated by laboratory director.	-	-	-	-	-
c. Temperature maintenance logbook for refrigerators.	-	-	-	-	-
d. Decontamination and cleaning procedures for:	-	-	-	-	-
i. Instruments;	-	-	-	-	-
ii. Bench space;	-	-	-	-	-
iii. Ventilation hood.	-	-	-	-	-
e. Documentation of adequacy of training of personnel and responsibility for each maintenance task.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
f. The organization shall describe or reference how periodic preventive and corrective maintenance of measurement or test equipment shall be performed to ensure availability and satisfactory performance of the systems.	-	-	-	-	-
22. Computer systems.	-	-	-	-	-
a. Adequate for sample tracking.	-	-	-	-	-
b. Adequate for analytical equipment software.	-	-	-	-	-
c. Software control requirements applicable to both commercial and laboratory developed software shall be developed, documented, and implemented.	-	-	-	-	-
d. In addition, procedures for software control shall address the security systems for the protection of applicable software.	-	-	-	-	-
e. For laboratory-developed software, a copy of the original program code shall be:	-	-	-	-	-
i. Maintained;	-	-	-	-	-
ii. All changes shall include a description of the change, authorization for the change;	-	-	-	-	-
iii. Test data that validates the change.	-	-	-	-	-
f. Software shall be acceptance tested when installed, after changes, and periodically during use, as appropriate.	-	-	-	-	-
g. Testing may consist of performing manual calculations or checking against another software product that has been previously tested, or by analysis of standards.	-	-	-	-	-
h. The version and manufacturer of the software shall be documented.	-	-	-	-	-
i. Commercially available software may be accepted as supplied by the vendor. For vendor supplied instrument control/data analysis software, acceptance testing may be performed by the laboratory.	-	-	-	-	-
23. Security.	-	-	-	-	-
a. Written facility security procedures during operating and nonworking hours.	-	-	-	-	-
b. Roles of personnel in security.	-	-	-	-	-
c. SOP for controlled access areas and personnel who can access.	-	-	-	-	-
d. Secured areas for log-in of sample, and for short and long-term storage of samples.	-	-	-	-	-
24. Storage.	-	-	-	-	-
a. Appropriate and adequate for sample storage over time. The laboratory shall monitor, control and record environmental conditions as required by the relevant specifications, methods and procedures or where they influence the quality of the results. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic disturbances, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned.	-	-	-	-	-
b. Adequate storage of chemical reference standards.	-	-	-	-	-
c. Appropriate storage of any reagents: Fireproof cabinet, separate cabinet for storage of any acids.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
d. Appropriate safe and secure storage of documents etc., archiving, retrieval of, maintenance of and security of data for a period of three years.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
25. Sampling/sample protocols: Written and approved by the laboratory director.	-	-	-	-	-
a. Demonstrate adequacy of the chain-of-custody tracking upon receipt of sample including all personnel handling the sample.	-	-	-	-	-
b. Sampling method (representative of an entire batch) including, but not limited to, homogenization, weighing, labeling, sample identifier (source, lot), date and tracking.	-	-	-	-	-
c. Condition of the sample: Macroscopic and foreign matter inspection - Fit for purpose test. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.	-	-	-	-	-
d. Failed inspection of product: Tracking and reporting.	-	-	-	-	-
e. Return of failed product documentation and tracking.	-	-	-	-	-
f. Disposal of used/unused samples documentation.	-	-	-	-	-
g. Sample preparation, extraction and dilution SOP.	-	-	-	-	-
h. Demonstration of recovery for samples in various matrices (SOPs):	-	-	-	-	-
i. Plant material - Flower;	-	-	-	-	-
ii. Edibles (solid and liquid meant to be consumed orally);	-	-	-	-	-
iii. Topical;	-	-	-	-	-
iv. Concentrates.	-	-	-	-	-
26. Data protocols.	-	-	-	-	-
a. Calculations for quantification of cannabinoid content in various matrices - SOPs.	-	-	-	-	-
b. Determination of the range for reporting the quantity (LOD/LOQ) data review or generation.	-	-	-	-	-
c. Reporting of data: Certificates of analysis (CA) - Clear and standardized format for consumer reporting.	-	-	-	-	-
d. Documentation that the value reported in the CA is within the range and limitations of the analytical method.	-	-	-	-	-
e. Documentation that qualitative results (those below the LOQ but above the LOD) are reported as "trace," or with a nonspecific (numerical) designation.	-	-	-	-	-
f. Documentation that the methodology has the specificity for the degree of quantitation reported. Final reports are not quantitative to any tenths or hundredths of a percent.	-	-	-	-	-
g. Use of appropriate "controls": Documentation of daily use of positive and negative controls that challenge the linearity of the curve; and/or an appropriate "matrix blank" and control with documentation of the performance for each calibration run.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
27. Chemical assay procedure/methodology.	-	-	-	-	-
28. Proficiency:	-	-	-	-	-
a. Documentation of use of an appropriate internal standard for any quantitative measurements as applicable to the method.	-	-	-	-	-
b. Appropriate reference standards for quantification of analytes, performing and documenting a calibration curve with each analysis.	-	-	-	-	-
c. Demonstration of calibration curve r^2value of no less than 0.995 with a minimum of four points within the range.	-	-	-	-	-
d. Documentation of any proficiency testing as it becomes available. Laboratory director must review, evaluate and report to the WSLCB any result that is outside the stated acceptable margin of error.	-	-	-	-	-
29. Method validation: Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation; **or**	-	-	-	-	-
30. Level II validation of methodology used for quantification of THC, THCA and CBD for total cannabinoid content (if reporting other cannabinoids, the method must also be validated for those compounds):	-	-	-	-	-
a. Single lab validation parameters are demonstrated for GC, HPLC data review:	-	-	-	-	-
i. Linearity of reference standards;	-	-	-	-	-
ii. Use of daily standard curve;	-	-	-	-	-
iii. Accuracy;	-	-	-	-	-
iv. Precision;	-	-	-	-	-
v. Recovery (5 determinations not less than 90%);	-	-	-	-	-
vi. Reproducibility over time within a relative standard deviation of 5%.	-	-	-	-	-
b. Dynamic range of the instrumentation: Limits of quantification (LOQ) and limits of detection (LOD).	-	-	-	-	-
c. Matrix extensions for each type of product tested, data review of recovery for:	-	-	-	-	-
i. Solvent-based extract;	-	-	-	-	-
ii. CO_2 extraction or other "hash oil";	-	-	-	-	-
iii. Extract made with food grade ethanol;	-	-	-	-	-
iv. Extract made with food grade glycerin or propylene glycol;	-	-	-	-	-
v. Infused liquids;	-	-	-	-	-
vi. Infused solids;	-	-	-	-	-
vii. Infused topical preparations;	-	-	-	-	-
viii. Other oils, butter or fats.	-	-	-	-	-
d. Presence of QC samples and recording of daily testing.	-	-	-	-	-
e. Appropriate use of an internal reference standard.	-	-	-	-	-
f. Daily monitoring of the response of the instrument detection system.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
31. Other methods.	-	-	-	-	-
a. Microbiological methods fit for purpose.	-	-	-	-	-
b. Microbial contaminants within limits of those listed in the most recent AHP monograph and otherwise directed by WSLCB.	-	-	-	-	-
c. Moisture content testing fit for purpose. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.	-	-	-	-	-
d. Solvent residuals testing fit for purpose; solvent extracted products made with class 3 or other solvents used are not to exceed 0.5% residual solvent by weight or 500 parts per million (PPM) per one gram of solvent based product and are to be tested.	-	-	-	-	-
e. Any other QA/QC methods is proven to be fit for purpose.	-	-	-	-	-
32. Laboratory notebooks.	-	-	-	-	-
a. Legible and in ink (or computerized system).	-	-	-	-	-
b. Signed and dated.	-	-	-	-	-
c. Changes initialed and dated.	-	-	-	-	-
d. Periodically reviewed and signed by a management representative.	-	-	-	-	-
33. Preventive/corrective action.	-	-	-	-	-
The laboratory shall have a process in place to document quality affecting preventive/corrective actions through resolution.	-	-	-	-	-
34. Periodic management review.	-	-	-	-	-
Laboratory management shall periodically review its quality system and associated procedures to evaluate continued adequacy. This review shall be documented.	-	-	-	-	-

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-104 Marijuana processor license extraction requirements. (1) Processors are limited to certain methods, equipment, solvents, gases and mediums when creating marijuana extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human health-related toxicity approved by the board. These solvents must be of at least ninety-nine percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

(3) Processors may use a professional grade closed loop CO_2 gas extraction system where every vessel is rated to a minimum of ((~~nine~~)) six hundred pounds per square inch. The CO_2 must be of at least ninety-nine percent purity.

(4) Certification must be provided to the liquor control board for professional grade closed loop systems used by processors ((~~must be~~)) to certify that the system was commercially manufactured and built to codes of recognized and generally accepted good engineering practices, such as:

(a) The American Society of Mechanical Engineers (ASME);

(b) American National Standards Institute (ANSI);

(c) Underwriters Laboratories (UL); or

(d) The American Society for Testing and Materials (ASTM).

(5) Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

(a) Title 296 WAC;

(b) National Fire Protection Association (NFPA) standards;

(c) International Building Code (IBC);

(d) International Fire Code (IFC); and

(e) Other applicable standards including following all applicable fire, safety, and building codes in processing and the handling and storage of the solvent or gas.

(6) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

(7) Under WAC 314-55-077, infused dairy butter and oils or fats derived from natural sources may be used to prepare infused edible products, but they may not be prepared as stand-alone edible products for sale.

(8) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts. All ethanol must be removed from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

(((~~8~~))) (9) Processors creating marijuana extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

(((~~9~~))) (10) Parts per million for one gram of finished extract cannot exceed 500 parts per million or residual solvent or gas when quality assurance tested per RCW 69.50.348.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-105 Packaging and labeling requirements. (1) All usable marijuana and marijuana-infused products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(2) Any container or packaging containing usable marijuana, marijuana concentrates, or marijuana-infused products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product.

(3) Upon the request of a retail customer, a retailer must disclose the name of the accredited third-party testing lab and results of the required quality assurance test for any usable marijuana, marijuana concentrate, or (((~~other~~))) marijuana-infused product the customer is considering purchasing.

(4) Usable marijuana, marijuana concentrates, and marijuana-infused products may not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(5) The accredited third-party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.

(6) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:

(a) Lot number;

(b) UBI number of the producer; and

(c) Weight of the product.

(7) Marijuana-infused products and marijuana concentrates meant to be eaten, swallowed, or inhaled, must be packaged in child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act or use standards specified in this subsection. Marijuana-infused product in solid or liquid form may be packaged in plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure. Marijuana-infused product in liquid form may also be sealed using a metal crown cork style bottle cap.

Marijuana-infused products in solid form containing more than one serving must be packaged in a package that remains child resistant after opening.

(8) A processor may provide a retailer free samples of usable marijuana packaged in a sample jar protected by a plastic or metal mesh screen to allow customers to smell the product before purchase. The sample jar may not contain more than three and one-half grams of usable marijuana. The sample jar and the usable marijuana within may not be sold to a customer and must be returned to the licensed processor who provided the usable marijuana and sample jar.

(9) A producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the usable marijuana.

(10) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

(11) **All usable marijuana when sold at retail must include accompanying material that contains the following warnings that state:**

(a) "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health";

(b) "There may be health risks associated with consumption of this product";

(c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.

(12) **All marijuana concentrates and marijuana-infused products sold at retail must include accompanying material that contains the following warnings that state:**

(a) "There may be health risks associated with consumption of this product";

(b) "This product is infused with marijuana or active compounds of marijuana";

(c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Products containing marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours";

(g) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to the infused product; and

(h) Statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.

(13) **Labels affixed to the container or package containing usable marijuana sold at retail must include:**

(a) The business or trade name and Washington state unified business identifier number of the licensees that ((~~produced,~~)) processed((~~,~~)) and sold the usable marijuana. The marijuana retail licensee trade name and Washington state unified business identifier number may be in the form of a sticker placed on the label;

(b) Lot number;

(c) Concentration of THC, ((~~THCA,~~)) (total Delta 9 THC and Delta 9 THC-A), CBD, including a total of active cannabinoids (potency profile);

(d) Net weight in ounces and grams or volume as appropriate;

(e) Warnings that state: "This product has intoxicating effects and may be habit forming";

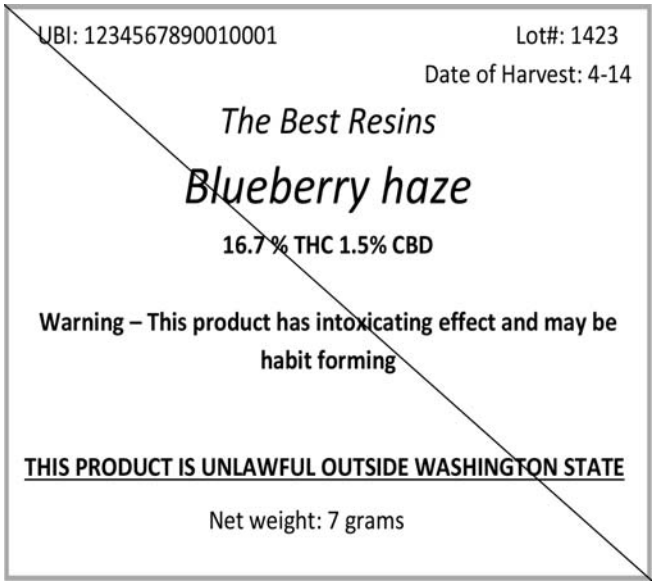
(f) Statement that "This product may be unlawful outside of Washington state";

(g) Date of harvest; and

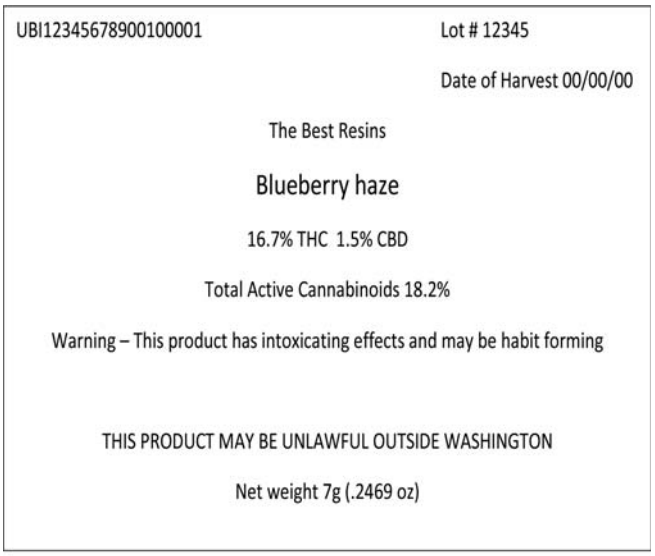
(h) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(14) **Sample label mock up for a container or package containing usable marijuana sold at retail with required information:**

((



))



(15) **Labels affixed to the container or package containing marijuana concentrates or marijuana-infused products sold at retail must include:**

(a) The business or trade name and Washington state unified business identifier number of the licensees that ((~~produced,~~)) processed((~~,~~)) and sold the usable marijuana. The marijuana retail licensee trade name and Washington state unified business identifier number may be in the form of a sticker placed on the label;

(b) ((~~Lot numbers of all base marijuana used to create the extract;~~

~~(c)~~)) Batch number;

(((~~d~~))) (c) Date manufactured;

(((~~e~~))) (d) Best by date;

(((~~f~~))) (e) Products meant to be eaten or swallowed, recommended serving size and the number of servings contained within the unit, including total milligrams of active tetrahydrocannabinol (THC), or Delta 9;

(((~~g~~))) (f) Net weight in ounces and grams, or volume as appropriate;

(((~~h~~))) (g) List of all ingredients and ((~~any~~)) major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;

(((~~i~~))) (h) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours.";

(((~~j~~))) (i) If a marijuana extract was added to the product, disclosure of the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract;

(((~~k~~))) (j) Warnings that state: "This product has intoxicating effects and may be habit forming";

(((~~l~~))) (k) Statement that "This product may be unlawful outside of Washington state";

(((~~m~~))) (l) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(16) **Sample label mock up (front and back) for a container or package containing marijuana-infused products sold at retail with required information:**

(Front of label)

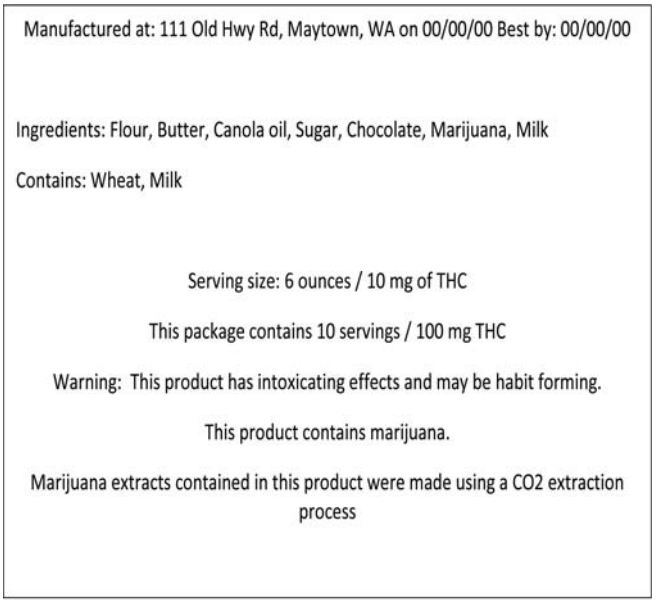
((

))

(Back of label)

((

))



AMENDATORY SECTION (Amending WSR 14-07-116, filed 3/19/14, effective 4/19/14)

WAC 314-55-210 Will the liquor control board seize or confiscate marijuana, usable marijuana, and marijuana-infused products? The liquor control board may seize or confiscate or place an administrative hold on marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products under the following circumstances:

(1) During an unannounced or announced administrative search or inspection of a licensed location, or vehicle involved in the transportation of marijuana products, where any product was found to be in excess of product limitations set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

(2) Any product not properly logged in inventory records or untraceable product required to be in the traceability system.

(3) Marijuana, usable marijuana, and marijuana-infused product that are altered or not properly packaged and labeled in accordance with WAC 314-55-105.

(4) During a criminal investigation, officers shall follow seizure laws detailed in RCW 69.50.505 and any other applicable criminal codes.

(5) Liquor control board officers may order an administrative hold of marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products to prevent destruction of evidence, diversion or other threats to public safety, while permitting a licensee to retain its inventory pending further investigation, pursuant to the following procedure:

(a) If during an investigation or inspection of a licensee, a liquor control board officer develops reasonable grounds to believe certain marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products constitute evidence of acts in violation of the state laws or rules, or otherwise constitute a threat to public safety, the liquor control board officer may issue a notice of administrative hold of any such marijuana, usable marijuana, marijuana concentrate, or marijuana-infused products. The notice of administrative hold shall provide a documented description of the marijuana, usable marijuana, marijuana concentrate, or marijuana-infused products to be subject to the administrative hold.

(b) The licensee shall completely and physically segregate the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products subject to the administrative hold in a limited access area of the licensed premises under investigation, where it shall be safeguarded by the licensee. Pending the outcome of the investigation and any related disciplinary proceeding, the licensee is prohibited from selling, giving away, transferring, transporting, or destroying the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products subject to the administrative hold.

(c) Nothing herein shall prevent a licensee from the continued cultivation or harvesting of the marijuana subject to the administrative hold. All marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products subject to the administrative hold must be put into separate harvest batches from product not subject to the administrative hold.

(d) Following an investigation, the liquor control board may lift the administrative hold, order the continuation of the administrative hold, or seek a final agency order for the destruction of the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-515 What are the penalties if a marijuana license holder violates a marijuana law or rule? (1) The purpose of WAC 314-55-515 through 314-55-540 is to outline what penalty a marijuana licensee can expect if a licensee or employee violates a liquor control board law or rule. (WAC rules listed in the categories provide reference areas, and may not be all inclusive. Any violation not listed in WAC 314-55-515 through 314-55-540 will be assessed following penalty progression of the license type group associated with the class of license.)

(2) Penalties for violations by marijuana licensees or employees are broken down into four categories:

(a) Group One—Public safety violations, WAC 314-55-520.

(b) Group Two—Regulatory violations, WAC 314-55-525.

(c) Group Three—License violations, WAC 314-55-530.

(d) Group Four—Producer violations involving the manufacture, supply, and/or distribution of marijuana by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-55-535.

(3) For the purposes of chapter 314-55 WAC, a three-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor control board may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension, or alternate penalty, during a settlement conference as outlined in WAC 314-55-510(3).

(a) **Mitigating circumstances**	(b) **Aggravating circumstances**
Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations. Examples include: • Having a signed acknowledgment of the business' responsible handling and sales policies on file for each employee;	Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of marijuana license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation. Examples include: • Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor control board officer, or when people have sustained injuries.
• Having an employee training plan that includes annual training on marijuana laws.	

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-520 Group 1 violations against public safety. Group 1 violations are considered the most serious because they present a direct threat to public safety. Based on chapter 69.50 RCW, some violations have only a monetary option. Some violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-55-515(4).

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
((~~**Violations involving minors:**~~	~~10-day suspension or $2,500 monetary option~~	~~30-day suspension~~	~~Cancellation of license~~))	
Sale or service to minor: Sale of marijuana and/or paraphernalia to a person under twenty-one years of age. WAC 314-55-079 RCW 69.50.4015 RCW 69.50.401 RCW 69.50.406 RCW 69.50.412	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Allowing a minor to frequent a restricted area. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Employee under legal age. RCW 69.50.357 RCW 69.50.331(6)	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Licensee and/or employee open and/or consuming marijuana on a retail licensed premises. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Conduct violations: Criminal conduct: Permitting or engaging in criminal conduct.	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Using unauthorized pesticides, soil amendments, fertilizers, other crop production aids. ((~~WAC 314-55-020(8)~~ ~~WAC 314-55-083(4)~~)) WAC 314-55-084 WAC 314-55-087 (1)(f)	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Adulterate usable marijuana with organic or non-organic chemical or other compound. WAC 314-55-105(((~~(8)~~)))	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Using unauthorized solvents or gases in processing. WAC 314-55-104	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. WAC 314-55-050 WAC 314-55-077	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Marijuana purchased from an unauthorized source. RCW 69.50.360 RCW 69.50.363	Cancellation of license			
Marijuana sold to an unauthorized source. RCW 69.50.363 RCW 69.50.366 RCW 69.50.401 **Sales in excess of transaction limitations.** WAC 314-55-095(3) RCW 69.50.360	Cancellation of license Cancellation of license			

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-525 Group 2 regulatory violations. Group 2 violations are violations involving general regulation and administration of retail or nonretail licenses.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Hours of service: Sales of marijuana between 12:00 a.m. and 8:00 a.m. WAC 314-55-147	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Advertising: Violations (statements/illustrations). WAC 314-55-155(2)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Advertising violations – Sign exceeding 1600 square inches; within 1000 feet of prohibited areas; on or in public transit vehicles, shelters, or publicly owned or operated property. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
RCW 69.50.369 WAC 314-55-155(1)				
Packaging and/or labeling violations (processor/retailer). WAC 314-55-105	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Licensee/employee failing to display required security badge. WAC 314-55-083(1)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Records: Improper recordkeeping. WAC 314-55-087 WAC 314-55-089 ((~~(3), (4), and (5)~~))	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to submit monthly tax reports and/or payments. WAC 314-55-089 WAC 314-55-092 RCW 69.50.535	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Signs: Failure to post required signs. WAC 314-55-086 RCW 69.50.331(5)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to utilize and/or maintain traceability (processor or retail licensee). WAC 314-55-083(4)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Exceeding maximum serving requirements for marijuana-infused products. WAC 314-55-095(2)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure for a processor to meet marijuana waste disposal requirements. WAC 314-55-097	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Failure to maintain standardized scale requirements (processor((~~/retailer~~))). WAC 314-55-099	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to follow and maintain food processing facility requirements. WAC 314-55-077	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Marijuana processor extraction requirements. WAC 314-55-104	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Retail outlet selling unauthorized products. RCW 69.50.357 RCW 69.50.4121	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Retailer displaying products in a manner visible to the general public from a public right of way. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-530 Group 3 license violations. Group 3 violations are violations involving licensing requirements, license classification, and special restrictions.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
True party of interest violation. WAC 314-55-035	Cancellation of license			
Failure to furnish required documents. WAC 314-55-050	Cancellation of license			
Misrepresentation of fact. WAC 314-55-050	Cancellation of license			
Operating plan: Violations of a board-approved operating plan. WAC 314-55-020	5-day suspension or $500 monetary option	10-day suspension or $1,500 monetary option	30-day suspension	Cancellation of license
Failing to gain board approval for changes in existing ownership. WAC 314-55-120 RCW 69.50.339	30-day suspension	Cancellation of license		

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Failure to maintain required insurance. WAC ((~~314-55-080~~)) 314-55-082	30-day suspension	Cancellation of license		

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-535 Group 4 marijuana producer violations. Group 4 violations are violations involving the manufacture, supply, and/or distribution of marijuana by marijuana producer licensees and prohibited practices between a marijuana producer licensee and a marijuana retailer licensee.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Unauthorized sale to a retail licensee. WAC 314-55-075 RCW 69.50.366 RCW 69.50.401	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to utilize and/or maintain traceability. WAC 314-55-083(4)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Packaging and/or labeling violations (producer). WAC 314-55-105	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Unauthorized product/unapproved storage or delivery. RCW 69.50.366 RCW 69.50.401	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure for a producer to meet marijuana waste disposal requirements. WAC 314-55-097	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Records: Improper recordkeeping. WAC 314-55-087 WAC 314-55-089 ((~~(2) and (4) WAC 314-55-092~~))	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Failure to maintain standardized scale requirements (producer). WAC 314-55-099	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
((~~Violation.~~)) Failure to submit monthly tax reports and/or payments. WAC 314-55-089 WAC 314-55-092	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Sale or service to minor; Sale of marijuana and/or paraphernalia to a person under twenty-one years of age. WAC 314-55-079 RCW 69.50.4015 RCW 69.50.401 RCW 69.50.406 RCW 69.50.412	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Conduct violations: Criminal conduct: Permitting or engaging in criminal conduct.	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Using unauthorized pesticides, soil amendments, fertilizers, other crop production aids. WAC 314-55-084 WAC 314-55-087 (1)(f)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Adulterate usable marijuana with organic or nonorganic chemical or other compound. WAC 314-55-105	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Using unauthorized solvents or gases in processing. WAC 314-55-104	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. WAC 314-55-050 WAC 314-55-077	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Marijuana purchased from an unauthorized source. RCW 69.50.360 RCW 69.50.363	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Marijuana sold to an unauthorized source. RCW 69.50.363 RCW 69.50.366 RCW 69.50.401	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Sales in excess of transaction limitations. WAC 314-55-095(3) RCW 69.50.360	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Advertising: Violations (statements/illustrations). WAC 314-55-155(2)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Packaging and/or labeling violations (producer/processor). WAC 314-55-105	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Licensee/employee failing to display required security badge. WAC 314-55-083(1)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Records: Improper recordkeeping. WAC 314-55-087 WAC 314-55-089	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Signs: Failure to post required signs. WAC 314-55-086 RCW 69.50.331(5)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Exceeding maximum serving requirements for marijuana-infused products. WAC 314-55-095(2)	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Failure to maintain standardized scale requirements (producer/processor). WAC 314-55-099	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Marijuana processor extraction requirements. WAC 314-55-104	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Operating plan: Violations of a board-approved operating plan. WAC 314-55-020	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failing to gain board approval for changes in existing ownership. WAC 314-55-120 RCW 69.50.339	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain required insurance. WAC 314-55-082	$2,500 monetary fine	$5,000 monetary fine and destruction of 25% of harvestable plants	$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license? (1) When the board processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The board will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

(2) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board will administratively close the application.

(3) The board may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:

Exception to criminal history point assignment. ((~~This exception to the criminal history point assignment will expire on July 1, 2014.~~))

(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.

(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;

(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.

(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.

(4) Once licensed, marijuana licensees must report any criminal convictions to the board within fourteen days.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license? (1) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer can also produce and sell marijuana plants, seed, and plant tissue culture to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production is initially limited to two million square feet, to be increased based on marketplace demand, but not to exceed eight and one-half million square feet without board approval. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 – Less than two thousand square feet;

(b) Tier 2 – Two thousand square feet to ten thousand square feet; and

(c) Tier 3 – Ten thousand square feet to thirty thousand square feet.

(7) The board may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum of two million square feet the board will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the board may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds two million square feet, the board reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows – One and one-quarter of a year's harvest; or

(b) Indoor grows – Six months of their annual harvest.

WSR 14-21-108
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Osteopathic Medicine and Surgery)

[Filed October 16, 2014, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-21-070.

Title of Rule and Other Identifying Information: Chapter 246-854 WAC, Osteopathic physician assistants (PAs), the board of osteopathic medicine and surgery (board) is proposing revisions to this chapter pursuant to SHB 1737 (chapter 203, Laws of 2013) to update osteopathic PA rules to incorporate national standards and best practices.

Hearing Location(s): Red Lion Hotel and Conference Center, 1 South Grady Way, Renton, WA 98507, on December 5, 2014, at 9:00 a.m.

Date of Intended Adoption: December 5, 2014.

Submit Written Comments to: Brett Cain, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by December 1, 2014.

Assistance for Persons with Disabilities: Contact Cece Zenker at (360) 236-4633, by November 25, 2014, TTY (800) 833-6388, or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to comply with SHB 1737 to update and modernize rules regulating PAs. Proposed revisions include: (1) Updated supervision ratios for PAs in regular clinic settings and remote sites; (2) changing the term "practice arrangement plan" to "delegation agreement"; and (3) clarifying regulatory requirements to incorporate national standards and best practices. The proposed rules are intended to clarify regulatory requirements and be synchronized, where possible, with the medical quality assurance commission's (commission) PA rules since many PA applicants for licensure now seek both an osteopathic and allopathic PA credential. The anticipated effect is more streamlined and aligned credentialing and del-

egation agreement processes for all PAs and applicants for PA licensure.

Reasons Supporting Proposal: The proposed rules are in response to SHB 1737's requirement to modernize existing PA rules. Per SHB 1737, the board worked in collaboration with the commission, The Washington Academy of Physician Assistants, the UW-MEDEX physician assistant training program, and interested stakeholders throughout the state to identify sections of the current rule that needed to be updated and modernized. The result of this collaborative work is more current, clearer, and streamlined regulations for PAs and applicants for PA licensure in Washington state.

Statutory Authority for Adoption: RCW 18.57.005, 18.57A.020, 18.57A.040, and 18.130.050.

Statute Being Implemented: SHB 1737 (chapter 203, Laws of 2013); chapter 18.57A RCW.

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

Name of Proponent: Department of health, board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brett Cain, 111 Israel Road S.E., Tumwater, WA 98504, (360) 236-4766.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Brett Cain, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4766, fax (360) 236-2901, e-mail brett.cain@doh.wa.gov.

October 16, 2014
Blake T. Maresh
Executive Director

NEW SECTION

WAC 246-854-005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Board" means the Washington state board of osteopathic medicine and surgery.

(2) "Delegation agreement" means a mutually agreed upon plan, as detailed in WAC 246-854-021, between a sponsoring osteopathic physician and an osteopathic physician assistant, which describes the manner and extent to which the osteopathic physician assistant will practice and be supervised.

(3) "NCCPA" means National Commission on Certification of Physician Assistants.

(4) "Osteopathic physician assistant" means a person who is licensed under chapter 18.57A RCW by the board to practice medicine to a limited extent only under the supervision of a physician as detailed in a delegation agreement approved by the board.

(5) "Remote site" means a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the osteopathic physician assistant.

(6) "Supervising physician" means a sponsoring or alternate physician providing clinical oversight for a physician assistant.

(a) "Sponsoring physician" means any osteopathic physician licensed under chapter 18.57 RCW and identified in a delegation agreement as providing primary clinical and administrative oversight for a physician assistant.

(b) "Alternate physician(s)" means any physician licensed under chapter 18.57 or 18.71 RCW who provides clinical oversight of a physician assistant in place of or in addition to the sponsoring physician.

NEW SECTION

WAC 246-854-007 Application withdrawals. An applicant for a license or interim permit may not withdraw his or her application if grounds for denial exist.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-010 Approved training and additional skills or procedures. (1) "Board approved program" means a physician assistant program accredited by:

(a) The committee on allied health education and accreditation (CAHEA);

(b) The commission on accreditation of allied health education programs (CAAHEP);

(c) The accreditation review committee on education for the physician assistant (ARC-PA); or

(d) ((~~Any successor accrediting organization utilizing the same standards.~~)) Other substantially equivalent organization(s) approved by the board.

(2) An individual enrolled in ((~~an accredited~~)) a board approved program for physician assistants may function only in direct association with his or her ((~~preceptorship~~)) preceptor physician or a delegated alternate physician in the immediate clinical setting. A trainee may not function in a remote ((~~location~~)) site or in the absence of the preceptor.

(3) If an osteopathic physician assistant is being trained to perform additional skills or procedures beyond those established by the board, the training must be carried out under the direct, personal supervision of the supervising osteopathic physician or other qualified physician familiar with the ((~~practice plan~~)) delegation agreement of the osteopathic physician assistant. The training arrangement must be mutually agreed upon by the supervising osteopathic physician and the osteopathic physician assistant.

(4) ((~~Requests for approval of~~)) To become approved to perform newly acquired skills or procedures an osteopathic physician assistant shall ((~~be submitted~~)) submit a request in writing to the board((~~, including~~)). The request must include a certificate by the program director or other acceptable evidence showing that he or she was trained in the additional skill or procedure for which authorization is requested. The board will review the evidence to determine whether the applicant has adequate knowledge to perform the additional skill or procedure.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-015 ((~~Utilization~~)) Use and supervision of an osteopathic physician assistant. (1) Unless otherwise stated, for the purposes of this section reference to "osteopathic physician assistant" means ((~~a licensed~~)) an osteopathic physician assistant or interim permit holder.

(2) ((~~A credentialed osteopathic physician assistant may not practice until the board approves a practice plan jointly submitted by the osteopathic physician assistant and osteopathic physician or physician group under whose supervision the osteopathic physician assistant will practice. The osteopathic physician assistant must submit the fee under WAC 246-853-990(5) with the practice plan.~~

~~(3) An osteopathic physician may supervise three osteopathic physician assistants. The board may consider requests to supervise more than three osteopathic physician assistants based on the individual qualifications and experience of the osteopathic physician and osteopathic physician assistant, community need, and review mechanisms identified in the approved practice plan.~~

~~(4) The osteopathic physician assistant shall practice only in the locations designated in the practice plan.~~

~~(5) The osteopathic physician assistant and supervising osteopathic physician shall ensure that:~~

~~(a) The supervising osteopathic physician timely reviews all reports of abnormalities and significant deviations, including the patient's chart;~~

~~(b) The charts of all patients seen by the osteopathic physician assistant are immediately and properly documented to include the activities, functions, services and treatment measures performed by the osteopathic physician assistant;~~

~~(c) All telephone advice given through the osteopathic physician assistant by the supervising osteopathic physician, alternate supervising physician, or member of a supervising physician group are documented in the patient's record;~~

~~(d) The supervising osteopathic physician provides adequate supervision and review of the osteopathic physician assistant's practice. The supervising osteopathic physician or designated alternate physician shall review and countersign:~~

~~(i) All charts of the licensed osteopathic physician assistant within seven working days for the first thirty days of practice and thereafter ten percent of their charts, including clinic, emergency room, and hospital patients within seven working days.~~

~~(ii) Every chart entry of an interim permit holder within two working days;~~

~~(e) The osteopathic physician assistant, at all times when meeting or treating patients, wears identification or a badge identifying him or her as an osteopathic physician assistant;~~

~~(f) The osteopathic physician assistant is represented in a manner which would not be misleading to the public as to his or her title.~~

~~(6) The osteopathic physician assistant shall notify the supervisor within twenty-four hours of any significant deviation in a patient's ongoing condition as identified by EKGs, laboratory tests, or X-rays not read by a radiologist.~~

~~(7) In the temporary absence of the supervising osteopathic physician, the osteopathic physician assistant may carry out those tasks for which he or she is credentialed, if the supervisory and review mechanisms are provided by a designated alternate supervisor. If an alternate osteopathic physician is not available in the community or practice, the board may authorize a physician licensed under chapter 18.71 RCW or physician group to act as the alternate physician supervisor. If a physician group is proposed as a designated alternate supervisor, the practice plan must specify how supervising responsibility is to be assigned among the members of the group.~~

~~(8) The supervising osteopathic physician and the osteopathic physician assistant shall advise the board of the termination date of the working relationship. The notification must be submitted in writing within thirty days of termination and include a written report indicating the reasons for termination.~~

~~(9) In the event that an osteopathic physician assistant who is currently credentialed desires to become associated with another osteopathic physician or physician group, he or she must submit a new practice plan and submit the fee under WAC 246-853-990(5). Board approval of the new relationship is required before the osteopathic physician assistant may begin practice under the new supervising physician. A physician assistant being supervised by an allopathic physician (MD) must be licensed and have an approved practice plan as provided in chapter 18.71A RCW.~~

~~(10) An osteopathic physician assistant working in or for a hospital, clinic or other health organization must be credentialed. His or her responsibilities to any other physicians must be defined in the board approved practice plan.~~)) A licensed osteopathic physician assistant may not practice until the board approves a delegation agreement jointly submitted by the osteopathic physician assistant and sponsoring physician or physician group under whose supervision the osteopathic physician assistant will practice.

(3) An osteopathic physician may enter into delegation agreements with up to five physician assistants, but may petition the board for a waiver of this limit. However, no osteopathic physician may have under his or her supervision:

(a) More than three physician assistants who are working in remote sites as provided in WAC 246-854-025; or

(b) More physician assistants than the osteopathic physician can adequately supervise. The board may consider petitions to supervise more than five osteopathic physician assistants based on the individual qualifications and experience of the osteopathic physician and osteopathic physician assistant, community need, and review mechanisms identified in the proposed delegation agreement.

(4) The osteopathic physician assistant shall practice only in the locations designated in the delegation agreement.

(5) The osteopathic physician assistant and supervising osteopathic physician shall ensure that the supervising osteopathic physician provides adequate supervision and review of the osteopathic physician assistant's practice.

(6) An osteopathic physician assistant must clearly identify himself or herself as an osteopathic physician assistant and must appropriately display on his or her person identification as an osteopathic physician assistant.

(7) An osteopathic physician assistant must not present himself or herself in any manner which would tend to mislead the public as to his or her title.

(8) In the event that an osteopathic physician assistant desires to become sponsored by another osteopathic physician, he or she must submit a new delegation agreement. Board approval of the new relationship is required before the osteopathic physician assistant may begin practice under the new sponsoring physician.

NEW SECTION

WAC 246-854-021 Delegation agreements. (1) The osteopathic physician assistant and sponsoring physician must submit a joint delegation agreement on forms provided by the board. An osteopathic physician assistant may not begin practicing without written board approval of a delegation agreement.

(2) The delegation agreement must specify:

(a) The names and Washington state license number of the sponsoring physician alternate physician, if any. In the case of a group practice, the alternate physicians do not need to be individually identified;

(b) A detailed description of the scope of practice of the osteopathic physician assistant;

(c) A description of the supervision process for the practice, including chart review; and

(d) The location of the primary practice and all remote practice sites and the amount of time spent by the osteopathic physician assistant at each site.

(3) The sponsoring physician and the osteopathic physician assistant shall determine which services may be performed and the degree of supervision under which the osteopathic physician assistant performs the services.

(4) The osteopathic physician assistant's scope of practice may not exceed the scope of practice of the supervising physician.

(5) An osteopathic physician assistant practicing in a multi-specialty group or organization may need more than one delegation agreement depending on the osteopathic physician assistant's training and the scope of practice of the physician(s) the osteopathic physician assistant will be working with.

(6) It is the joint responsibility of the osteopathic physician assistant and the physician(s) named in the delegation agreement to notify the board in writing of any significant changes in the scope of practice of the osteopathic physician assistant. The board or its designee will evaluate the changes and determine whether a new delegation agreement is required.

(7) An osteopathic physician may enter into delegation agreements with up to five physician assistants, but may petition the board for a waiver of this limit. However, no osteopathic physician may have under his or her supervision:

(a) More than three physician assistants who are working in remote sites as provided in WAC 246-918-120; or

(b) More physician assistants than the osteopathic physician can adequately supervise.

(8) Within thirty days of termination of the working relationship, the sponsoring physician and the osteopathic physician assistant shall submit a letter to the board indicating the relationship has been terminated.

(9) Whenever an osteopathic physician assistant is practicing in a manner inconsistent with the approved delegation agreement, the board may take disciplinary action under chapter 18.130 RCW.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-025 Remote ((~~practice~~)) site((~~—Utilization~~)). (((~~(1) "Remote practice site" means a setting physically separate from the supervising osteopathic physician's primary practice location or a setting where the osteopathic physician is present less than twenty-five percent of the practice time of the osteopathic physician assistant.~~

~~(2) The board may approve a practice plan proposing utilization of an osteopathic physician assistant at a remote practice site if:~~

~~(a) There is a demonstrated need for this utilization;~~

~~(b) There is adequate means for immediate communication between the primary osteopathic physician or alternate physician and the osteopathic physician assistant;~~

~~(c) The supervising osteopathic physician spends at least ten percent of the documented and scheduled practice time of the osteopathic physician assistant in the remote office site. In the case of part time or unique practice settings, the osteopathic physician may petition the board to modify the on-site requirement provided adequate supervision is maintained by an alternate method. The board will consider each request on an individual basis;~~

~~(d) The names of the supervising osteopathic physician and osteopathic physician assistant must be prominently displayed at the entrance to the clinic or in the reception area.~~

~~(3) No osteopathic physician assistant holding an interim permit shall be utilized in a remote practice site.~~)) (1) An osteopathic physician assistant may not work in a remote site without the approval by the board or its designee. An osteopathic physician may not supervise more than three physician assistants who are working in remote sites; or more physician assistants than the osteopathic physician can adequately supervise.

(2) The board or its designee may approve the use of an osteopathic physician assistant in a remote site if:

(a) There is a demonstrated need for such use;

(b) There are adequate means for immediate communication between the supervising physician and the osteopathic physician assistant;

(c) The supervising physician spends at least ten percent of the practice time of the osteopathic physician assistant in the remote site. In the case of part time or unique practice settings, the osteopathic physician may petition the board to modify the on-site requirement provided adequate supervision is maintained by an alternate method including, but not limited to, telecommunication. The board will consider each request on an individual basis; and

(d) The names of the supervising physician and osteopathic physician assistant must be prominently displayed at the entrance to the clinic or in the reception area of the remote site.

(3) An osteopathic physician assistant holding an interim permit may not work in a remote site setting.

AMENDATORY SECTION (Amending WSR 07-08-052, filed 3/29/07, effective 4/29/07)

WAC 246-854-030 ((~~Osteopathic physician assistant~~)) Prescriptions. (1) An osteopathic physician assistant may ((~~issue written or oral prescriptions as provided in this section when designated by the supervising physician on the practice plan and approved by the board.~~

~~(a) An osteopathic physician assistant certified by the National Commission on Certification of Physician Assistants (P.A.-C.) may issue prescriptions for legend drugs and Schedule II through V controlled substances.~~

~~(b) A noncertified osteopathic physician assistant (P.A.) may issue prescriptions for legend drugs and Schedule III through V controlled substances.~~

~~(2) Written prescriptions shall comply with state and federal prescription writing laws. The osteopathic physician assistant shall sign a prescription by using his or her own name followed by the letters "P.A." to designate a noncertified osteopathic physician assistant, or "P.A.-C." to designate a certified osteopathic physician assistant and the physician assistant's license number.~~

~~(3) Prescriptions for Schedule II through V controlled substances must include the osteopathic physician assistant drug enforcement administration registration number or, if none, the supervising physician's drug enforcement administration registration number.~~

~~(4) An osteopathic physician assistant may issue prescriptions for a patient who is under his or her care, or the care of the supervising osteopathic physician.~~

~~(5) An osteopathic physician assistant employed or having been extended privileges by a hospital, nursing home or other health care institution may, if permissible under the bylaws and rules of the institution, order pharmaceutical agents for inpatients under his or her care or the care of the supervising osteopathic physician.~~

~~(6) An osteopathic physician assistant may dispense legend drugs and controlled substances from office supplies. An osteopathic physician assistant may dispense prescription drugs for treatment up to forty-eight hours. The medication so dispensed must comply with the state law prescription labeling requirements.~~

~~(7) The supervising physician shall assume full responsibility for review of the osteopathic physician assistant's prescription writing practice on an ongoing basis.~~)) prescribe, order, administer and dispense legend drugs and Schedule II, III, IV, or V controlled substances only if consistent with the scope of practice in an approved delegation agreement provided:

(a) The osteopathic physician assistant has an active DEA registration; and

(b) All prescriptions comply with state and federal prescription regulations.

(2) If a supervising physician's prescribing privileges have been limited by state or federal actions, the osteopathic physician assistant will be similarly limited in his or her prescribing privileges, unless otherwise authorized in writing by the board.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-035 Osteopathic physician assistant—Scope of practice. (1) For the purpose of this section, reference to "osteopathic physician assistant" means a licensed osteopathic physician assistant or interim permit holder.

(2) The osteopathic physician assistant may perform services for which they have been trained and approved in a ((~~practice plan~~)) delegation agreement by the board. Those services ((~~summarized in the standardized procedures reference and guidelines established by the board~~)) may be performed by the osteopathic physician assistant unless limited in the approved ((~~practice plan~~)) delegation agreement.

(3) An osteopathic physician assistant may sign and attest to any document that might ordinarily be signed by a licensed osteopathic physician, to include, but not be limited to, such things as birth and death certificates.

(4) An osteopathic physician assistant may prescribe legend drugs and controlled substances as permitted in WAC 246-854-030.

NEW SECTION

WAC 246-854-075 Background check—Temporary practice permit. The board may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the board may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

A temporary practice permit that is issued by the board is valid for six months. A one-time extension of six months may be granted if the national background check report has not been received by the board.

(2) The temporary practice permit allows the applicant to work in the state of Washington as an osteopathic physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as an osteopathic physician assistant provided that the temporary practice permit holder has a delegation agreement approved by the board.

(3) The board issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or the application for a full license is denied.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-080 Osteopathic physician assistant ((~~licensure—Qualifications and~~))—Requirements for licensure. (1) Individuals applying to the board ((~~under chap-~~

~~ter 18.57A RCW after July 1, 1999, must have graduated from an accredited board approved physician assistant program and successfully passed the National Commission on Certification of Physician Assistants examination;~~

~~(2) Subsection (1) of this section does not apply to an osteopathic physician assistant licensed prior to July 1, 1999.~~

~~(3) An applicant applying for licensure as an osteopathic physician assistant must submit an application on forms supplied by the board. The application must detail the education, training, and experience of the osteopathic physician assistant and provide other information as may be required. The application must be accompanied by a fee determined by the secretary under RCW 43.70.250 as specified in WAC 246-853-990(5).~~

~~(4) Each applicant shall furnish proof of the following, which must be approved by the board:~~

~~(a) The applicant has completed an accredited board approved physician assistant program;~~

~~(b) The applicant has successfully passed the National Commission on Certification of Physician Assistants examination;~~

~~(c) The applicant has not committed unprofessional conduct as defined in RCW 18.130.180; and~~

~~(d) The applicant is physically and mentally capable of practicing as an osteopathic physician assistant with reasonable skill and safety.~~

~~(5) The board will only consider complete applications with all supporting documents for licensure.~~

~~(6) An osteopathic physician assistant may not begin practice without written board approval of the practice plan for each working relationship.~~)) for licensure as an osteopathic physician assistant must have graduated from an accredited board approved physician assistant program and successfully passed the NCCPA examination.

(2) An applicant for licensure as an osteopathic physician assistant must submit to the board:

(a) A completed application on forms provided by the board;

(b) Proof the applicant has completed an accredited board approved physician assistant program and successfully passed the NCCPA examination;

(c) All applicable fees as specified in WAC 246-853-990; and

(d) Proof of completion of four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(3) The board will only consider complete applications with all supporting documents for licensure.

(4) An osteopathic physician assistant may not begin practicing without written board approval of the delegation agreement.

NEW SECTION

WAC 246-854-081 How to return to active status when a license has expired. To return to active status the osteopathic physician assistant must meet the requirements of chapter 246-12 WAC, Part 2, which includes paying the applicable fees under WAC 246-853-990 and meeting the continuing medical education requirements under WAC 246-854-115.

NEW SECTION

WAC 246-854-082 Requirements for obtaining an osteopathic physician assistant license for those who hold an active allopathic physician assistant license. A person who holds a full, unrestricted physician assistant license that is in good standings issued by the Washington state medical quality assurance commission and meets current licensing requirements may apply for licensure as an osteopathic physician assistant through an abbreviated application process.

(1) An applicant for an osteopathic physician assistant license must:

(a) Hold an active, unrestricted license as a physician assistant issued by the Washington state medical quality assurance commission;

(b) Submit a completed application on forms provided by the board; and

(c) Submit any fees required under WAC 246-853-990.

(2) A physician assistant may not begin practice without written board approval of the delegation agreement.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-085 Interim permit—Qualifications and interim permit requirements. (((~~(1) Individuals applying to the board for an interim permit under RCW 18.57A.020(1) must have graduated from an accredited board approved physician assistant program.~~

~~(2) Interim permit holders will have one year from issuance of the interim permit to successfully pass the National Commission on Certification of Physician Assistants examination.~~

~~(3) An applicant applying for an osteopathic physician assistant interim permit must submit an application on forms supplied by the board. The application must detail the education, training, and experience of the osteopathic physician assistant and provide other information as may be required. The application must be accompanied by a fee determined by the secretary under RCW 43.70.250 as specified in WAC 246-853-990(5).~~

~~(4) Each applicant shall furnish proof of the following, which must be approved by the board:~~

~~(a) The applicant has completed an accredited physician assistant program approved by the board;~~

~~(b) The applicant is eligible to take the National Commission on Certification of Physician Assistants examination;~~

~~(c) The applicant has not committed unprofessional conduct as defined in RCW 18.130.180; and~~

~~(d) The applicant is physically and mentally capable of practicing as an osteopathic physician assistant with reasonable skill and safety.~~

~~(5) The board will only consider complete applications with all supporting documents for the interim permit.~~

~~(6) An osteopathic physician assistant may not begin practice without written board approval of the practice plan for each working relationship.~~)) An interim permit is a limited license. The permit allows an individual who has graduated from a board approved program within the previous

twelve months to practice prior to successfully passing the board approved licensing examination.

(1) An individual applying to the board for an interim permit under RCW 18.57A.020(1) must have graduated from an accredited board approved physician assistant program.

(2) An interim permit is valid for one year from completion of a board approved training program. The interim permit may not be renewed.

(3) An applicant for an osteopathic physician assistant interim permit must submit to the board:

(a) A completed application on forms provided by the board;

(b) Applicable fees as specified in WAC 246-853-990; and

(c) Requirements as specified in WAC 246-854-080.

(4) An interim permit holder may not work in a remote site.

NEW SECTION

WAC 246-854-095 Scope of practice—Allopathic alternate physician. The osteopathic physician assistant licensed under chapter 18.57A RCW shall practice under the delegation agreement and prescriptive authority approved by the board whether the alternate supervising physician is licensed as an osteopathic physician under chapter 18.57 RCW or allopathic physician under chapter 18.71 RCW.

NEW SECTION

WAC 246-854-105 Practice limitations due to disciplinary action. (1) To the extent a supervising physician's prescribing privileges have been limited by any state or federal authority, either involuntarily or by the physician's agreement to such limitation, the physician assistant will be similarly limited in his or her prescribing privileges, unless otherwise authorized in writing by the board.

(2) The physician assistant shall notify their sponsoring physician whenever the physician assistant is the subject of an investigation or disciplinary action by the board. The board may notify the sponsoring physician or other supervising physicians of such matters as appropriate.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-854-110 Osteopathic physician assistant renewal and continuing medical education ((~~required~~)) cycle. ((~~(1) Licensed osteopathic physician assistants must complete fifty hours of continuing education annually as required in chapter 246-12 WAC, Part 7.~~

~~(2) Certification of compliance with the requirement for continuing education of the American Osteopathic Association, Washington State Osteopathic Association, National Commission on Certification of Physician Assistants, Washington Academy of Physician Assistants, American Academy of Physician's Assistants, and the American Medical Association, or a recognition award or a current certification of continuing education from medical practice academies shall be deemed sufficient to satisfy the requirements of these regulations.~~

~~(3) In the case of a permanent retirement or illness, the board may grant indefinite waiver of continuing education as a requirement for licensure, provided an affidavit is received indicating that the osteopathic physician assistant is not providing osteopathic medical services to consumers. If such permanent retirement or illness status is changed or osteopathic medical services are resumed, it is incumbent upon the licensee to immediately notify the board and show proof of practice competency as determined necessary by the board.~~

~~(4) Prior approval not required.~~

~~(a) The Washington state board of osteopathic medicine and surgery does not approve credits for continuing education. The board will accept any continuing education that reasonably falls within these regulations and relies upon each individual osteopathic physician assistant's integrity in complying with this requirement.~~

~~(b) Continuing education program sponsors need not apply for nor expect to receive prior board approval for continuing education programs. The continuing education category will depend solely upon the determination of the accrediting organization or institution. The number of creditable hours may be determined by counting the contact hours of instruction and rounding to the nearest quarter hour.~~)) (1) Under WAC 246-12-020, an initial credential issued within ninety days of the osteopathic physician assistant's birthday does not expire until the osteopathic physician assistant's next birthday.

(2) An osteopathic physician assistant must renew his or her license every year on his or her birthday. Renewal fees are accepted no sooner than ninety days prior to the expiration date.

(3) Each osteopathic physician assistant will have one year to meet the continuing medical education requirements in WAC 246-854-115. The review period begins on the first birthday after receiving the initial license.

NEW SECTION

WAC 246-854-112 Retired active license. (1) To obtain a retired active license an osteopathic physician assistant must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).

(2) An osteopathic physician assistant with a retired active license must have a delegation agreement approved by the board in order to practice except when serving as a "covered volunteer emergency worker" as defined in RCW 38.52.180 (5)(a) and engaged in authorized emergency management activities.

(3) An osteopathic physician assistant with a retired active license may not receive compensation for health care services.

(4) An osteopathic physician assistant with a retired active license may practice under the following conditions:

(a) In emergent circumstances calling for immediate action; or

(b) Intermittent circumstances on a part-time or full-time nonpermanent basis.

(5) A retired active license expires on the license holder's birthday. Retired active credential renewal fees are accepted no sooner than ninety days prior to the expiration date.

(6) An osteopathic physician assistant with a retired active license shall report fifty hours of continuing education at every renewal.

AMENDATORY SECTION (Amending WSR 93-24-028, filed 11/22/93, effective 12/23/93)

WAC 246-854-115 ((~~Categories of creditable continuing professional education activities.~~)) Continuing medical education requirements. ((~~The following are categories of creditable continuing education activities approved by the board. The credits must be earned in the twelve-month period preceding application for renewal of licensure. One clock hour shall equal one credit hour for the purpose of satisfying the fifty hour continuing education requirement.~~

~~Category 1 - A minimum of thirty credit hours are mandatory under this category.~~

~~1-A Formal educational program sponsored by nationally recognized organizations or institutions which have been approved by the American Osteopathic Association, Washington State Osteopathic Association, Washington Academy of Physician Assistants, National Commission on Certification of Physician Assistants, American Medical Association, and the American Academy of Physician's Assistants.~~

~~1 B Preparation in publishable form of an original scientific paper.~~

~~a. A maximum of five credit hours for initial presentation or publication of a paper in a professional journal.~~

~~1 C Serving as a teacher, lecturer, preceptor or a moderator-participant in a formal educational program or preparation and scientific presentation at a formal educational program sponsored by one of the organizations or institutions specified in Category 1-A. One hour credit per each hour of instruction may be claimed.~~

~~a. A maximum of five credit hours per year.~~

~~Category 2 - Home study.~~

~~2 A A maximum of twenty credit hours per year may be granted.~~

~~a. Reading - Medical journals and quizzes.~~

~~1) One-half credit hour per issue~~

~~2) One-half credit hour per quiz~~

~~b. Listening - audio tape programs.~~

~~1) One-half credit hour per tape program~~

~~2) One-half credit hour per tape program quiz~~

~~c. Other - subject - oriented and refresher home study courses.~~

~~1) Credit hours indicated by sponsor will be accepted~~

~~2-B Preparation and presentation of a scientific exhibit at professional meetings.~~

~~a. Maximum of five credit hours per exhibit per year.~~

~~2-C Observation at medical centers; programs dealing with experimental and investigative areas of medical practice and programs conducted by nonrecognized sponsors.~~

~~a. Maximum of five credit hours per year.~~)) (1) An osteopathic physician assistant must complete fifty hours of continuing education every year as required in chapter 246-12 WAC, Part 7, which may be audited for compliance at the discretion of the board.

(2) In lieu of the continuing medical education requirements, the board will accept:

(a) Current certification with the NCCPA; or

(b) Compliance with a continuing maintenance of competency program through the American Academy of Physician Assistants (AAPA) or the NCCPA; or

(c) Other programs approved by the board.

(3) The board approves the following categories of creditable continuing medical education. A minimum of thirty credit hours must be earned in:

Category I - Continuing medical education activities with accredited sponsorship.

Category II - Continuing medical education activities with nonaccredited sponsorship and other meritorious learning experience.

(4) The board adopts the standards approved by the AAPA for the evaluation of continuing medical education requirements in determining the acceptance and category of any continuing medical education experience.

(5) An osteopathic physician assistant does not need prior approval of any continuing medical education. The board will accept any continuing medical education that reasonably falls within the requirements of this section and relies upon each osteopathic physician assistant's integrity to comply with these requirements.

(6) A continuing medical education sponsor does not need to apply for or expect to receive prior board approval for a formal continuing medical education program. The continuing medical education category will depend solely upon the accredited status of the organization or institution. The number of hours may be determined by counting the contact hours of instruction and rounding to the nearest quarter hour. The board relies upon the integrity of the program sponsors to present continuing medical education for the osteopathic physician assistant that constitutes a meritorious learning experience.

(7) In the case of a permanent retirement or illness, the board may grant an indefinite waiver of continuing education as a requirement for licensure, provided that an affidavit is received indicating that the osteopathic physician assistant is not providing osteopathic medical services to consumers. If such permanent retirement or illness status is changed or osteopathic medical services are resumed, it is incumbent upon the licensee to immediately notify the board and show proof of practice competency as determined necessary by the board.

AMENDATORY SECTION (Amending WSR 08-20-125, filed 10/1/08, effective 11/1/08)

WAC 246-854-220 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this section, laser, light, radiofrequency, and plasma (LLRP) devices are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescriptive devices.

(2) Because an LLRP device is used to treat disease, injuries, deformities and other physical conditions of human beings, the use of an LLRP device is the practice of osteopathic medicine under RCW 18.57.001. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than those in subsection (1) of this section constitutes surgery and is outside the scope of this section.

OSTEOPATHIC PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) An osteopathic physician assistant may use an LLRP device with the consent of the sponsoring or supervising osteopathic physician who meets the requirements under WAC 246-853-630, is in compliance with the ((~~practice arrangement plan~~)) delegation agreement approved by the board, and in accordance with standard medical practice.

(5) An osteopathic physician assistant must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(6) Prior to authorizing treatment with an LLRP device, an osteopathic physician assistant must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that ((~~an allied health care practitioner~~)) a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

OSTEOPATHIC PHYSICIAN ASSISTANT DELEGATION OF LLRP TREATMENT

(7) An osteopathic physician assistant who meets the above requirements may delegate an LLRP device procedure to a properly trained ((~~allied health care~~)) and licensed professional ((~~licensed under the authorization of RCW 18.130.040~~)), whose licensure and scope of practice allows the use of a prescriptive LLRP medical device provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised ((~~allied health care~~)) professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye; and

(d) The supervised ((~~allied health care~~)) professional has appropriate training including, but not limited to:

(i) Application techniques of each LLRP device;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for such procedures;

(iv) Preprocedural and postprocedural care;

(v) Potential complications; and

(vi) Infectious disease control involved with each treatment;

(e) The delegating osteopathic physician assistant has written office protocol for the supervised ((~~allied health care~~)) professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual osteopathic physician assistant authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised ((~~allied health care~~)) professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised ((~~allied health care~~)) professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing osteopathic physician assistant concerning specific decisions made. Documentation shall be recorded after each procedure on the patient's record or medical chart;

(f) The osteopathic physician assistant is responsible for ensuring that the supervised ((~~allied health care~~)) professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device;

(g) The osteopathic physician assistant shall be on the immediate premises during any use of an LLRP device and be able to treat complications, provide consultation, or resolve problems, if indicated.

AMENDATORY SECTION (Amending WSR 11-08-024, filed 3/31/11, effective 5/1/11)

WAC 246-854-230 Nonsurgical medical cosmetic procedures. (1) The purpose of this rule is to establish the duties and responsibilities of an osteopathic physician assistant who injects medication or substances for cosmetic purposes or uses prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.57.001.

(2) This section does not apply to:

(a) Surgery;

(b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-853-630 and 246-854-220;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes.

(b) "Physician" means an individual licensed under chapter 18.57 RCW.

(c) "Physician assistant" means an individual licensed under chapter 18.57A RCW.

(d) "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) An osteopathic physician assistant may perform a nonsurgical medical cosmetic procedure only after the board approves a ((~~practice plan~~)) delegation agreement permitting the osteopathic physician assistant to perform such procedures. An osteopathic physician assistant must ensure that the supervising or sponsoring osteopathic physician is in full compliance with WAC 246-853-640.

(5) An osteopathic physician assistant may not perform a nonsurgical medical cosmetic procedure unless his or her supervising or sponsoring osteopathic physician is fully and appropriately trained to perform that same procedure.

(6) Prior to performing a nonsurgical medical cosmetic procedure, an osteopathic physician assistant must have appropriate training in, at a minimum:

(a) Techniques for each procedure;

(b) Cutaneous medicine;

(c) Indications and contraindications for each procedure;

(d) Preprocedural and postprocedural care;

(e) Recognition and acute management of potential complications that may result from the procedure; and

(f) Infectious disease control involved with each treatment.

(7) The osteopathic physician assistant must keep a record of his or her training in the office and available for review upon request by a patient or a representative of the board.

(8) Prior to performing a nonsurgical medical cosmetic procedure, either the osteopathic physician assistant or the delegating osteopathic physician must:

(a) Take a history;

(b) Perform an appropriate physical examination;

(c) Make an appropriate diagnosis;

(d) Recommend appropriate treatment;

(e) Obtain the patient's informed consent including disclosing the credentials of the person who will perform the procedure;

(f) Provide instructions for emergency and follow-up care; and

(g) Prepare an appropriate medical record.

(9) The osteopathic physician assistant must ensure that there is a written office protocol for performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(a) A statement of the activities, decision criteria, and plan the osteopathic physician assistant must follow when performing procedures under this rule;

(b) Selection criteria to screen patients for the appropriateness of treatment;

(c) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(d) A statement of the activities, decision criteria, and plan the osteopathic physician assistant must follow if performing a procedure delegated by an osteopathic physician pursuant to WAC 246-853-640, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.

(10) An osteopathic physician assistant may not delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

(11) An osteopathic physician assistant may perform a nonsurgical medical cosmetic procedure that uses a medication or substance, whether or not approved by the federal Food and Drug Administration for the particular purpose for which it is used, so long as the osteopathic physician assistant's sponsoring or supervising osteopathic physician is onsite.

(12) An osteopathic physician assistant must ensure that each treatment is documented in the patient's medical record.

(13) An osteopathic physician assistant may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

(14) An osteopathic physician assistant must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

(15) An osteopathic physician assistant must participate in a quality assurance program required of the supervising or sponsoring physician under WAC 246-853-640.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-854-040	Osteopathic physician assistant use of drugs or autotransfusion to enhance athletic ability.
WAC 246-854-050	AIDS education and training.
WAC 246-854-060	Application for licensure.

WSR 14-21-109
PROPOSED RULES
DEPARTMENT OF HEALTH
(Medical Quality Assurance Commission)

[Filed October 16, 2014, 10:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-20-098.

Title of Rule and Other Identifying Information: Chapter 246-918 WAC, Physicians assistants—Medical quality assurance commission, proposing the revision of physician assistant (PA) rules pursuant to SHB 1737 (chapter 203, Laws of 2013) to update PA rules to incorporate current national standards and best practices.

Hearing Location(s): Red Lion Hotel, 1 South Grady Way, Renton, WA 98057, on December 5, 2014, at 9:00 a.m.

Date of Intended Adoption: December 5, 2014.

Submit Written Comments to: Daidria Pittman, Program Manager, Medical Quality Assurance Commission (MQAC), Department of Health, P.O. Box 47866, Olympia, WA 98504-7866, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2795, by December 1, 2014.

Assistance for Persons with Disabilities: Contact Daidria Pittman by November 25, 2014, TTY (800) 833-6388, or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to comply with SHB 1737 to update and modernize rules regulating PAs. Proposed revisions include: (1) Updated supervision ratios for PAs in regular clinic settings and remote sites; (2) changing the term "practice plan" to "delegation agreement"; and (3) clarifying regulatory requirements to incorporate national standards and best practices. The proposed rules are intended to clarify regulatory requirements and be synchronized, where possible, with the board of osteopathic medicine and surgery's PA rules since many PA applicants for licensure now seek both an allopathic and osteopathic PA credential. The anticipated effect is more streamlined and aligned credentialing and delegation agreement processes for all PAs and applicants for PA licensure.

Reasons Supporting Proposal: The proposal responds to SHB 1737 requirements to modernize existing PA rules. SHB 1737 required MQAC to collaborate with the board of osteopathic medicine and surgery and a statewide organization representing PAs to update rules for PAs. As a result, the commission worked with the Washington academy of physician assistants, the UW-MEDEX's physician assistant training program, and the board to propose changes in accordance with SHB 1737 to establish more current, clearer, and streamlined rules for PAs and applicants for PA licensure in Washington state.

Statutory Authority for Adoption: RCW 18.71.017, 18.71A.040, 18.130.050, chapter 18.71A RCW.

Statute Being Implemented: Chapter 18.71A RCW, SHB 1737 (chapter 203, Laws of 2013).

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

Name of Proponent: MQAC, department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Maura Craig, P.O. Box 47850, Olympia, WA 98504-7850, (360) 236-4997; Implementation and Enforcement: Melanie de Leon, P.O. Box 47866, Olympia, WA 98504-7866, (360) 236-2755.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Daidria Pittman, MQAC, Department of Health, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-2727, fax (360) 236-2795, e-mail daidria.pittman@doh.wa.gov.

October 16, 2014
Melanie de Leon
Executive Director

AMENDATORY SECTION (Amending WSR 01-18-085, filed 9/5/01, effective 10/6/01)

WAC 246-918-005 Definitions. ((~~The following terms used in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:~~

~~(1) "Certified physician assistant" means an individual who has successfully completed an accredited and commission approved physician assistant program and has passed the initial national boards examination administered by the National Commission on Certification of Physician Assistants (NCCPA).~~

~~(2) "Physician assistant" means an individual who either:~~

~~(a) Successfully completed an accredited and commission approved physician assistant program, is eligible for the NCCPA examination and was licensed in Washington state prior to July 1, 1999;~~

~~(b) Qualified based on work experience and education and was licensed prior to July 1, 1989;~~

~~(c) Graduated from an international medical school and was licensed prior to July 1, 1989; or~~

~~(d) Holds an interim permit issued pursuant to RCW 18.71A.020(1).~~

~~(3) "Physician assistant surgical assistant" means an individual who was licensed as a physician assistant between September 30, 1989, and December 31, 1989, to function in a limited extent as authorized in WAC 246-918-230.~~

~~(4) "Licensee" means an individual credentialed as a certified physician assistant, physician assistant, or physician assistant-surgical assistant.~~

~~(5) "Commission approved program" means a physician assistant program accredited by the Committee on Allied Health Education and Accreditation (CAHEA); the Commission on Accreditation of Allied Health Education Programs (CAAHEP); the Accreditation Review Committee on Education for the Physician Assistant (ARC-PA); or any successive accrediting organizations.~~

~~(6) "Sponsoring physician" means the physician who is responsible for consulting with a certified physician assistant. An appropriate degree of supervision is involved.~~

~~(7) "Supervising physician" means the physician who is responsible for closely supervising, consulting, and reviewing the work of a physician assistant.~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Commission" means the Washington state medical quality assurance commission.

(2) "Commission approved program" means a physician assistant program accredited by the committee on allied health education and accreditation (CAHEA); the commis-

sion on accreditation of allied health education programs (CAAHEP); the accreditation review committee on education for the physician assistant (ARC-PA); or other substantially equivalent organization(s) approved by the commission.

(3) "Delegation agreement" means a mutually agreed upon plan, as detailed in WAC 246-918-055, between a sponsoring physician and physician assistant, which describes the manner and extent to which the physician assistant will practice and be supervised.

(4) "NCCPA" means National Commission on Certification of Physician Assistants.

(5) "Osteopathic physician" means an individual licensed under chapter 18.57 RCW.

(6) "Physician" means an individual licensed under chapter 18.71 RCW.

(7) "Physician assistant" means a person who is licensed under chapter 18.71A RCW by the commission to practice medicine to a limited extent only under the supervision of a physician as defined in chapter 18.71 RCW.

(a) "Certified physician assistant" means an individual who has successfully completed an accredited and commission approved physician assistant program and has passed the initial national boards examination administered by the National Commission on Certification of Physician Assistants (NCCPA).

(b) "Noncertified physician assistant" means an individual who:

(i) Successfully completed an accredited and commission approved physician assistant program, is eligible for the NCCPA examination, and was licensed in Washington state prior to July 1, 1999;

(ii) Is qualified based on work experience and education and was licensed prior to July 1, 1989;

(iii) Graduated from an international medical school and was licensed prior to July 1, 1989; or

(iv) Holds an interim permit issued pursuant to RCW 18.71A.020(1).

(c) "Physician assistant-surgical assistant" means an individual who was licensed under chapter 18.71A RCW as a physician assistant between September 30, 1989, and December 31, 1989, to function in a limited extent as authorized in WAC 246-918-250 and 246-918-260.

(8) "Remote site" means a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the licensee.

(9) "Supervising physician" means a sponsoring or alternate physician providing clinical oversight for a physician assistant.

(a) "Sponsoring physician" means any physician licensed under chapter 18.71 RCW and identified in a delegation agreement as providing primary clinical and administrative oversight for a physician assistant.

(b) "Alternate physician" means any physician licensed under chapter 18.71 or 18.57 RCW who provides clinical oversight of a physician assistant in place of or in addition to the sponsoring physician.

AMENDATORY SECTION (Amending WSR 01-18-085, filed 9/5/01, effective 10/6/01)

WAC 246-918-007 Application withdrawals. An ((~~application~~)) applicant for a license or interim permit may not ((~~be withdrawn~~)) withdraw his or her application if grounds for denial exist.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-918-035 ((~~Certified physician assistant~~)) Prescriptions. ((~~A certified physician assistant may issue written or oral prescriptions as provided herein when approved by the commission or its designee.~~

~~(1) Written prescriptions shall include the name, address, and telephone number of the physician or medical group; the name and address of the patient and the date on which the prescription was written.~~

~~(a) The certified physician assistant shall sign such a prescription using his or her own name followed by the letters "P.A.-C."~~

~~(b) The written prescriptions for schedule two through five must include the physician assistant's D.E.A. registration number, or, if none, the sponsoring physician's D.E.A. registration number, followed by the letters "P.A.-C" and the physician assistant's license number.~~

~~(2) A certified physician assistant employed or extended privileges by a hospital, nursing home or other health care institution may, if permissible under the bylaws, rules and regulations of the institution, order pharmaceutical agents for inpatients under the care of the sponsoring physician(s).~~

~~(3) The license of a certified physician assistant who issues a prescription in violation of these provisions shall be subject to revocation or suspension.~~

~~(4) Certified physician assistants may dispense medications the certified physician assistant has prescribed from office supplies. The certified physician assistant shall comply with the state laws concerning prescription labeling requirements.~~)) (1) A physician assistant may prescribe, order, administer, and dispense legend drugs and Schedule II, III, IV, or V controlled substances consistent with the scope of practice in an approved delegation agreement provided:

(a) The physician assistant has an active DEA registration; and

(b) All prescriptions comply with state and federal prescription regulations.

(2) If a supervising physician's prescribing privileges have been limited by state or federal actions, the physician assistant will be similarly limited in his or her prescribing privileges, unless otherwise authorized in writing by the commission.

AMENDATORY SECTION (Amending WSR 01-18-085, filed 9/5/01, effective 10/6/01)

WAC 246-918-050 Physician assistant qualifications ((~~effective July 1, 1999~~)) for interim permits. ((~~Individuals applying to the commission under chapter 18.71A RCW after July 1, 1999, must have graduated from an accredited physician assistant program approved by the commission and be~~

~~certified by successful completion of the NCCPA examination: EXCEPT those applying for an interim permit under RCW 18.71A.020(1) who will have one year from issuance of the interim permit to successfully complete the examination.~~)) An interim permit is a limited license. The permit allows an individual who has graduated from a commission approved program within the previous twelve months to practice prior to successfully passing the commission approved licensing examination.

(1) An individual applying to the commission for an interim permit under RCW 18.71A.020(1) must have graduated from an accredited commission approved physician assistant program.

(2) An interim permit is valid for one year from completion of a commission approved physician assistant training program. The interim permit may not be renewed.

(3) An applicant for a physician assistant interim permit must submit to the commission:

(a) A completed application on forms provided by the commission;

(b) Applicable fees as specified in WAC 246-918-990; and

(c) Requirements as specified in WAC 246-918-080.

(4) An interim permit holder may not work in a remote site.

NEW SECTION

WAC 246-918-055 Delegation agreements. (1) The physician assistant and sponsoring physician must submit a joint delegation agreement on forms provided by the commission. A physician assistant may not begin practicing without written commission approval of a delegation agreement.

(2) The delegation agreement must specify:

(a) The names and Washington state license number of the sponsoring physician and alternate physician, if any. In the case of a group practice, the alternate physicians do not need to be individually identified;

(b) A detailed description of the scope of practice of the physician assistant;

(c) A description of the supervision process for the practice; and

(d) The location of the primary practice and all remote sites and the amount of time spent by the physician assistant at each site.

(3) The sponsoring physician and the physician assistant shall determine which services may be performed and the degree of supervision under which the physician assistant performs the services.

(4) The physician assistant's scope of practice may not exceed the scope of practice of the supervising physician.

(5) A physician assistant practicing in a multispecialty group or organization may need more than one delegation agreement depending on the physician assistant's training and the scope of practice of the physician(s) the physician assistant will be working with.

(6) It is the joint responsibility of the physician assistant and the supervising physician(s) to notify the commission in writing of any significant changes in the scope of practice of the physician assistant. The commission or its designee will evaluate the changes and determine whether a new delegation agreement is required.

(7) A physician may enter into delegation agreements with up to five physician assistants, but may petition the commission for a waiver of this limit. However, no physician may have under his or her supervision:

(a) More than three physician assistants who are working in remote sites as provided in WAC 246-918-120; or

(b) More physician assistants than the physician can adequately supervise.

(8) Within thirty days of termination of the working relationship, the sponsoring physician or the physician assistant shall submit a letter to the commission indicating the relationship has been terminated.

(9) Whenever a physician assistant is practicing in a manner inconsistent with the approved delegation agreement, the commission may take disciplinary action under chapter 18.130 RCW.

AMENDATORY SECTION (Amending WSR 10-05-029, filed 2/9/10, effective 2/11/10)

WAC 246-918-075 Background check—Temporary practice permit. ((~~The medical quality assurance commission (MQAC) conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The MQAC may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.~~

~~(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the MQAC may issue a temporary practice permit allowing time to complete the national criminal background check requirements.~~

~~The MQAC will issue a temporary practice permit that is valid for six months. A one time extension of six months will be granted if the national background check report has not been received by the MQAC.~~

~~(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as a physician assistant.~~

~~(3) The MQAC issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.~~

~~(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.~~)) The commission may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the commission may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

A temporary practice permit that is issued by the commission is valid for six months. A one-time extension of six months may be granted if the national background check report has not been received by the commission.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as a physician assistant provided that the temporary practice permit holder has a delegation agreement approved by the commission.

(3) The commission issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or the application for a full license is denied.

AMENDATORY SECTION (Amending WSR 01-18-085, filed 9/5/01, effective 10/6/01)

WAC 246-918-080 Physician assistant—Requirements for licensure. (((~~(1) Application procedure. Applications may be made jointly by the physician and the physician assistant on forms supplied by the commission. Applications and supporting documents must be on file in the commission office prior to consideration for a license or interim permit.~~

~~(2) No physician assistant or physician assistant-surgical assistant shall begin practice without commission approval of the practice plan of that working relationship. Practice plans must be submitted on forms provided by the commission.~~

~~(3) Changes or additions in supervision. In the event that a physician assistant or physician assistant-surgical assistant who is currently credentialed desires to become associated with another physician, he or she must submit a new practice plan. See WAC 246-918-110 regarding termination of working relationship.~~)) (1) Except for a physician assistant licensed prior to July 1, 1999, individuals applying to the commission for licensure as a physician assistant must have graduated from an accredited commission approved physician assistant program and successfully passed the NCCPA examination.

(2) An applicant for licensure as a physician assistant must submit to the commission:

(a) A completed application on forms provided by the commission;

(b) Proof the applicant has completed an accredited commission approved physician assistant program and successfully passed the NCCPA examination;

(c) All applicable fees as specified in WAC 246-918-990;

(d) Proof of completion of four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8; and

(e) Other information required by the commission.

(3) The commission will only consider complete applications with all supporting documents for licensure.

(4) A physician assistant may not begin practicing without written commission approval of a delegation agreement.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-918-081 ((~~Expired license.~~)) How to return to active status when a license has expired. (1) ((~~If the license has expired for three years or less the practitioner~~)) To return to active status the physician assistant must meet the requirements of chapter 246-12 WAC, Part 2, which includes paying the applicable fees under WAC 246-918-990 and meeting the continuing medical education requirements under WAC 246-918-180.

(2) If the license has expired for over three years, the ((~~practitioner must:~~

~~(a) Reapply for licensing under current requirements;~~

~~(b) Meet the requirements of chapter 246-12 WAC, Part 2~~)) physician assistant must meet requirements in subsection (1) of this section and the current licensure requirements under WAC 246-918-080.

NEW SECTION

WAC 246-918-082 Requirements for obtaining an allopathic physician assistant license for those who hold an active osteopathic physician assistant license. A person who holds a full, active, unrestricted osteopathic physician assistant license that is in good standing issued by the Washington state board of osteopathic medicine and surgery and meets current licensing requirements may apply for licensure as an allopathic physician assistant through an abbreviated application process.

(1) An applicant for an allopathic physician assistant license must:

(a) Hold an active, unrestricted license as an osteopathic physician assistant issued by the Washington state board of osteopathic medicine and surgery;

(b) Submit a completed application on forms provided by the commission; and

(c) Submit any fees required under WAC 246-918-990.

(2) An allopathic physician assistant may not begin practice without written commission approval of the delegation agreement.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-918-095 Scope of practice—Osteopathic alternate physician. The physician assistant ((~~licensed under chapter 18.71A RCW practices under the practice plan~~)) shall practice under the delegation agreement and prescriptive authority approved by the commission whether the ((~~alternate sponsoring physician or~~)) alternate supervising physician is licensed as an osteopathic physician under chapter 18.57 RCW or an allopathic physician under chapter 18.71 RCW.

AMENDATORY SECTION (Amending WSR 94-15-065, filed 7/19/94, effective 8/19/94)

WAC 246-918-105 ((~~Disciplinary action of sponsoring or supervising physician.~~)) Practice limitations due to disciplinary action. ((~~To the extent that the sponsoring or supervising physician's practice has been limited by disciplinary action under chapter 18.130 RCW, the physician assistant's practice is similarly limited while working under that physician's sponsorship or supervision.~~)) (1) To the extent a supervising physician's prescribing privileges have been limited by any state or federal authority, either involuntarily or by the physician's agreement to such limitation, the physician assistant will be similarly limited in his or her prescribing privileges, unless otherwise authorized in writing by the commission.

(2) The physician assistant shall notify their sponsoring physician whenever the physician assistant is the subject of an investigation or disciplinary action by the commission. The commission may notify the sponsoring physician or other supervising physicians of such matters as appropriate.

AMENDATORY SECTION (Amending WSR 04-11-100, filed 5/19/04, effective 6/30/04)

WAC 246-918-120 Remote site((~~—Utilization—Limitations, geographic~~)). (1) ((~~No licensee shall be utilized~~)) A physician assistant may not work in a remote site without approval ((~~by~~)) of the commission or its designee. ((~~A remote site is defined as a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the licensee.~~)) A physician may not supervise more than three physician assistants who are working in remote sites, or more physician assistants than the physician can adequately supervise.

(2) ((~~Approval by~~)) The commission or its designee may ((~~be granted to utilize a licensee~~)) grant the use of a physician assistant in a remote site if:

(a) There is a demonstrated need for such ((~~utilization~~)) use;

(b) Adequate provision for timely communication exists between the ((~~primary or alternate~~)) supervising physician and the ((~~licensee exists~~)) physician assistant;

(c) The ((~~responsible sponsoring or~~)) supervising physician spends at least ten percent of the practice time of the ((~~licensee~~)) physician assistant in the remote site. In the case of part time or unique practice settings, the physician may petition the commission to modify the on-site requirement providing the ((~~sponsoring~~)) supervising physician demonstrates that adequate supervision is being maintained by an alternate method including, but not limited to, telecommunication. The commission will consider each request on an individual basis((~~;~~)).

(((~~(d)~~)) (3) The names of the ((~~sponsoring or~~)) supervising physician and the ((~~licensee shall~~)) physician assistant must be prominently displayed at the entrance to the clinic or in the reception area of the remote site.

(((~~(3) No~~)) (4) A physician assistant holding an interim permit ((~~shall be utilized~~)) may not work in a remote site ((~~setting~~)).

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-918-130 Physician assistant((~~s~~)) identification. (1) A physician assistant ((~~may perform only those services as outlined in the standardized procedures reference and guidelines established by the commission. If said assistant is being trained to perform additional procedures beyond those established by the commission, the training must be carried out under the direct, personal supervision of the supervising physician or a qualified person mutually agreed upon by the supervising physician and the physician assistant. Requests for approval of newly acquired skills shall be submitted to the commission and may be granted by a reviewing commission member or at any regular meeting of the commission.~~

(2) ~~The physician assistant may not practice in a remote site, or prescribe controlled substances unless specifically approved by the commission or its designee.~~

(3) ~~A physician assistant may sign and attest to any document that might ordinarily be signed by a licensed physician, to include but not limited to such things as birth and death certificates.~~

(4) ~~A physician assistant and supervising physician shall ensure that, with respect to each patient, all activities, functions, services and treatment measures are immediately and properly documented in written form by the physician assistant. Every written entry shall be reviewed and countersigned by the supervising physician within two working days unless a different time period is authorized by the commission.~~

(5) ~~It shall be the responsibility of the physician assistant and the supervising physician to ensure that adequate supervision and review of the work of the physician assistant are provided.~~

(6) ~~In the temporary absence of the supervising physician, the supervisory and review mechanisms shall be provided by a designated alternate supervisor(s).~~

(7) ~~The physician assistant, at all times when meeting or treating patients, must wear a badge identifying him or her as a physician assistant.~~

(8) ~~No physician assistant may be presented in any manner which would tend to mislead the public as to his or her title~~)) must clearly identify himself or herself as a physician assistant and must appropriately display on his or her person identification as a physician assistant.

(2) A physician assistant must not present himself or herself in any manner which would tend to mislead the public as to his or her title.

AMENDATORY SECTION (Amending WSR 99-23-090, filed 11/16/99, effective 1/1/00)

WAC 246-918-171 Renewal and continuing medical education cycle ((~~revision~~)). ((~~Beginning January 1, 2000, the one-year renewal cycle for physician assistants will transition to a two-year cycle and two-year continuing medical education cycle. The renewal and continuing medical education will be as follows:~~

(1) ~~Effective January 1, 2000, any physician assistant whose birth year is an even number will renew their credential for twenty-four months and every two years thereafter.~~

~~Those physician assistants must obtain one hundred hours of continuing medical education within the twenty-four months following the date their first two-year license is issued and every two years thereafter.~~

~~(2) Effective January 1, 2001, any physician assistant whose birth year is an odd number will renew their credential for twenty-four months and every two years thereafter. Those physician assistants must obtain one hundred hours of continuing medical education within the twenty-four months following the date their first two-year license is issued and every two years thereafter.~~)) (1) Under WAC 246-12-020, an initial credential issued within ninety days of the physician assistant's birthday does not expire until the physician assistant's next birthday.

(2) A physician assistant must renew his or her license every two years on his or her birthday. Renewal fees are accepted no sooner than ninety days prior to the expiration date.

(3) Each physician assistant will have two years to meet the continuing medical education requirements in WAC 246-918-180. The review period begins on the first birth date after receiving the initial license.

NEW SECTION

WAC 246-918-175 Retired active license. (1) To obtain a retired active license a physician assistant must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).

(2) A physician assistant with a retired active license must have a delegation agreement approved by the commission in order to practice except when serving as a "covered volunteer emergency worker" as defined in RCW 38.52.180 (5)(a) and engaged in authorized emergency management activities.

(3) A physician assistant with a retired active license may not receive compensation for health care services.

(4) A physician assistant with a retired active license may practice under the following conditions:

(a) In emergent circumstances calling for immediate action; or

(b) Intermittent circumstances on a part-time or full-time nonpermanent basis.

(5) A retired active license expires every two years on the license holder's birthday. Retired active credential renewal fees are accepted no sooner than ninety days prior to the expiration date.

(6) A physician assistant with a retired active license shall report one hundred hours of continuing education at every renewal.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-918-180 Continuing medical education requirements. (1) ((~~Licensed~~)) A physician assistant((~~s~~)) must complete one hundred hours of continuing education every two years as required in chapter 246-12 WAC, Part 7, which may be audited for compliance at the discretion of the commission.

(2) In lieu of one hundred hours of continuing medical education the commission will accept ((~~a current certification with the National Commission for the Certification of Physician Assistants and will consider approval of other programs as they are developed~~)):

(a) Current certification with the NCCPA; or

(b) Compliance with a continuing maintenance of competency program through the American Academy of Physician Assistants (AAPA) or the NCCPA; or

(c) Other programs approved by the commission.

(3) The commission approves the following categories of creditable continuing medical education. A minimum of forty credit hours must be earned in Category I.

Category I	Continuing medical education activities with accredited sponsorship
Category II	Continuing medical education activities with nonaccredited sponsorship and other meritorious learning experience.

(4) The commission adopts the standards approved by the ((~~American Academy of Physician Assistants~~)) AAPA for the evaluation of continuing medical education requirements in determining the acceptance and category of any continuing medical education experience.

(5) ((~~It will not be necessary to inquire into the~~)) A physician assistant does not need prior approval of any continuing medical education. The commission will accept any continuing medical education that reasonably falls within ((~~these regulations~~)) the requirements of this section and relies upon each ((~~licensee's~~)) physician assistant's integrity ((~~in complying with this~~)) to comply with these requirements.

(6) A continuing medical education sponsor((~~s need~~)) does not need to apply for ((~~nor~~)) or expect to receive prior commission approval for a formal continuing medical education program. The continuing medical education category will depend solely upon the accredited status of the organization or institution. The number of hours may be determined by counting the contact hours of instruction and rounding to the nearest quarter hour. The commission relies upon the integrity of the program sponsors to present continuing medical education for ((~~licensees~~)) the physician assistant that constitutes a meritorious learning experience.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-918-250 Basic physician assistant-surgical assistant (PASA) duties. The physician assistant-surgical assistant (PASA) who is not eligible to take the NCCPA certifying exam shall:

(1) Function only in the operating room as approved by the commission;

(2) Only be allowed to close skin and subcutaneous tissue, placing suture ligatures, clamping, tying and clipping of blood vessels, ((~~use of cautery~~)) and cauterizing for hemostasis under direct supervision;

(3) ((~~Not be allowed to perform any independent surgical procedures, even under direct supervision, and will~~)) Only be

allowed to ((~~only~~)) assist the operating surgeon. The PASA may not perform any independent surgical procedures, even under direct supervision;

(4) Have no prescriptive authority; and

(5) Only write operative notes. The PASA may not write any progress notes or order(s) on hospitalized patients((~~, except operative notes~~)).

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-918-260 Physician assistant-surgical assistant (PASA)—((~~Utilization~~)) Use and supervision. (((~~(1) Responsibility of physician assistant-surgical assistant. The physician assistant-surgical assistant is responsible for performing only those tasks authorized by the supervising physician(s) and within the scope of physician assistant-surgical assistant practice described in WAC 246-918-250. The physician assistant-surgical assistant is responsible for ensuring his or her compliance with the rules regulating physician assistant-surgical assistant practice and failure to comply may constitute grounds for disciplinary action.~~

~~(2) Limitations, geographic. No physician assistant-surgical assistant shall be utilized in a place geographically separated from the institution in which the assistant and the supervising physician are authorized to practice.~~

~~(3) Responsibility of supervising physician(s). Each physician assistant-surgical assistant shall perform those tasks he or she is authorized to perform only under the supervision and control of the supervising physician(s), but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where the services are rendered. It shall be the responsibility of the supervising physician(s) to insure that:~~

~~(a) The operating surgeon in each case directly supervises and reviews the work of the physician assistant-surgical assistant. Such supervision and review shall include remaining in the surgical suite until the surgical procedure is complete;~~

~~(b) The physician assistant-surgical assistant shall wear a badge identifying him or her as a "physician assistant-surgical assistant" or "P.A.S.A." In all written documents and other communication modalities pertaining to his or her professional activities as a physician assistant-surgical assistant, the physician assistant-surgical assistant shall clearly denominate his or her profession as a "physician assistant-surgical assistant" or "P.A.S.A.";~~

~~(c) The physician assistant-surgical assistant is not presented in any manner which would tend to mislead the public as to his or her title.~~)) The following section applies to the physician assistant-surgical assistant (PASA) who is not eligible to take the NCCPA certification exam.

(1) Responsibility of PASA. The PASA is responsible for performing only those tasks authorized by the supervising physician(s) and within the scope of PASA practice described in WAC 246-918-250. The PASA is responsible for ensuring his or her compliance with the rules regulating PASA practice and failure to comply may constitute grounds for disciplinary action.

(2) Limitations, geographic. No PASA may be used in a place geographically separated from the institution in which the PASA and the supervising physician are authorized to practice.

(3) Responsibility of supervising physician(s). Each PASA shall perform those tasks he or she is authorized to perform only under the supervision and control of the supervising physician(s). Such supervision and control may not be construed to necessarily require the personal presence of the supervising physician at the place where the services are rendered. It is the responsibility of the supervising physician(s) to ensure that:

(a) The operating surgeon in each case directly supervises and reviews the work of the physician assistant-surgical assistant. Such supervision and review shall include remaining in the surgical suite until the surgical procedure is complete;

(b) The PASA shall wear identification as a "physician assistant-surgical assistant" or "PASA." In all written documents and other communication modalities pertaining to his or her professional activities as a PASA, the PASA shall clearly denominate his or her profession as a "physician assistant-surgical assistant" or "PASA";

(c) The PASA is not presented in any manner which would tend to mislead the public as to his or her title.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-918-030	Prescriptions issued by physician assistants.
WAC 246-918-070	Credentialing of physician assistants.
WAC 246-918-090	Physician assistant and certified physician assistant utilization.
WAC 246-918-110	Termination of sponsorship or supervision.
WAC 246-918-140	Certified physician assistants.
WAC 246-918-150	Assistance or consultation with other physicians.
WAC 246-918-170	Physician assistant and certified physician assistant AIDS prevention and information education requirements.
WAC 246-918-230	Practice of medicine—Surgical procedures.
WAC 246-918-310	Acupuncture—Definition.

WSR 14-21-116
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed October 16, 2014, 4:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-14-129.

Title of Rule and Other Identifying Information: WAC 458-20-177 (Rule 177) Sales of motor vehicles, campers, and trailers to nonresident consumers.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 2, 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 no later than three days before the hearing date.*

Date of Intended Adoption: December 9, 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 December 2, 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 WAC 458-20-177 to remove the requirement for sellers to obtain a corporate nonresident permit number and the obligation that buyers obtain such a permit. Additional updating and removal of outdated language has been done.

Reasons Supporting Proposal: To update the rule to provide businesses with current tax-reporting information.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.08.0264.

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 Carson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; 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.

October 16, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-041, filed 7/29/08, effective 8/29/08)

WAC 458-20-177 Sales of motor vehicles, campers, and trailers to nonresident consumers. (1) **Introduction.** This ((~~section~~)) rule applies to any sale of a vehicle to a consumer who is not a resident of the state, including nonresident military personnel temporarily stationed in Washington. The ((~~section~~)) rule describes the different business and occupation (B&O) and retail sales tax consequences that result from vehicle sales to nonresidents, particularly the sales tax exemption provided by RCW 82.08.0264. It also describes the documentation a seller must retain to demonstrate that a sale is exempt.

(a) For information on use tax liability associated with vehicles, see WAC 458-20-178, Use tax.

(b) For sales of vehicles to Indians or Indian tribes and required documentation, see WAC 458-20-192, Indians—Indian country.

(c) Questions regarding vehicle licensing or registration requirements should be directed to the department of licensing.

(2) **What is a "vehicle"?** For the purposes of this ((~~section~~)) rule, a "vehicle" is any vehicle of a type that may be lawfully licensed under chapter ((~~46.16~~)) 46.16A RCW for operation on a public highway in this state, except that the term does not include any machinery and implements for use in conducting a farming activity subject to RCW 82.08.0268. The term "vehicle" includes, but is not limited to, a car, truck, camper, trailer, bus, motorhome, and motorcycles equipped for road use. It does not include farm tractors, bicycles, mopeds, motorized scooters, snowmobiles, or vehicles that are manufactured for exclusively off-road use.

(3) **What are the tax consequences when a vehicle sold to a nonresident is delivered in-state?** A sale of a vehicle to a nonresident where the vehicle is delivered in-state is exempt from retail sales tax if the sale meets the requirements of RCW 82.08.0264. In all other cases where the vehicle is delivered to the buyer in this state, the retail sales tax applies and must be collected at the time of sale, unless otherwise exempt by law. The mere fact that the buyer may be or claims to be a nonresident or that the buyer intends to, and actually does, use the vehicle in some other state does not, by itself, entitle the buyer to the exemption. In any case where the seller licenses or registers the vehicle in Washington on the buyer's behalf, the retail sales tax applies.

In computing the B&O tax liability of persons engaged in the business of selling vehicles, no deduction is allowed for a sale made to a nonresident for use outside this state if the nonresident buyer takes delivery in Washington. This is true even if the buyer is entitled to an exemption from the retail sales tax.

(a) **Exemption requirements.** If a vehicle is delivered within this state to a nonresident buyer, retail sales tax does not apply if the vehicle is purchased for use outside this state and, immediately upon delivery, the vehicle:

(i) Is removed from the state under the authority of a trip permit issued by the department of licensing pursuant to RCW ((~~46.16.160~~)) 46.16A.320 or any agency of another state that has authority to issue similar permits; or

(ii) Is registered and licensed in the state of the buyer's residence, will not be used in this state more than three months, and will not be legally required to be registered and licensed in this state.

If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivering

the vehicle and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

(b) **Seller obligations; documentation required from natural person buyers.** ((~~For sales completed before July 22, 2007, the seller must properly document the following facts:~~

~~(i) The buyer is a nonresident of Washington;~~

~~(ii) The vehicle is for use outside this state;~~

~~(iii) The vehicle is to be removed from the seller's premises under the authority of either:~~

~~(A) A trip permit; or~~

~~(B) Valid license plates issued for that vehicle by the state of the buyer's residence, with the plates actually affixed to the vehicle upon final delivery; and~~

~~(iv) If the vehicle bears Washington state license plates, the seller has removed the Washington plates before delivery.~~

~~(c) **Seller obligations effective July 22, 2007.** For sales completed on or after July 22, 2007,~~)) The seller must retain the following documents, which must be made available upon request by the department of revenue (department):

(i) A copy of the buyer's currently valid out-of-state driver's license or other official picture identification issued by a jurisdiction other than Washington state;

(ii) A copy of any one of the following documents, on which there is an out-of-state address for the buyer:

((~~•~~)) (A) A current residential rental agreement;

((~~•~~)) (B) A property tax statement from the current or previous year;

((~~•~~)) (C) A utility bill, dated within the previous two months;

((~~•~~)) (D) A state income tax return from the previous year;

((~~•~~)) (E) A voter registration card;

((~~•~~)) (F) A current credit report; or

((~~•~~)) (G) Any other document determined by the department to be acceptable, with buyer's street address, such as:

(((~~A~~))) (I) A bank statement issued within the previous two months;

(((~~B~~))) (II) A government check issued within the previous two months;

(((~~C~~))) (III) A pay check issued within the previous two months;

(((~~D~~))) (IV) Mortgage documents of current personal residence;

(((~~E~~))) (V) Current vehicle insurance card;

(((~~F~~))) (VI) Letter or other documentation issued by the postmaster within the previous two months;

(((~~G~~))) (VII) Other government document issued within the previous two months;

(iii) A completed witnessed declaration in the form designated by the department, signed by the buyer, and stating that the buyer's purchase meets the requirements of this section (buyer's affidavit); and

(iv) A seller's certification, in the form designated by the department, that either a vehicle trip permit was issued or the vehicle was immediately registered and licensed in another state as required by RCW 82.08.0264.

To comply with these requirements, the seller must retain a properly completed buyer's affidavit and seller's certificate (in-state delivery). ((~~If the nonresident buyer is a corporation, the seller must also retain the number of the corporate nonresident permit~~)) See the department's web site dor.wa.gov for affidavit and certificate forms.

(((~~d~~))) (c) **Seller obligations; documentation required from corporate buyers.** Sales tax does not apply to sales of vehicles to nonresident corporations for use outside of this state. The sale must meet the requirements stated in (b) of this subsection pertaining to qualified nonresident natural persons. Some documents listed in (b)(ii) of this subsection, such as residential rental agreement, voter registration card, or mortgage documents for a personal residence, do not pertain to corporate purchases. In addition to the applicable requirements in (b) of this subsection, the seller must establish that the corporation is the purchaser (i.e., paid for by corporate check and registered in the corporation's name). A distinction exists between the corporation and its employees or officers. The exemption still applies, for example, when an officer or employee, purchasing on behalf of the corporation, is a Washington resident when all other requirements are met.

A corporation with places of business in one or more other states outside Washington is a "nonresident" for purposes of RCW 82.08.0264. A Washington corporation purchasing a vehicle for out-of-state use by a nonresident salesperson or out-of-state office qualifies for this exemption if the vehicle leaves the state with a valid one-transit permit or with foreign state license plates attached at the time of delivery, and nonresident affidavits are completed. If the vehicle is subsequently used in Washington, use tax is due on the value of the vehicle at the time of its first use in Washington. See the department's web site dor.wa.gov for affidavit and certificate forms.

(d) **What are the consequences for noncompliance?**

(i) Any seller that makes sales without collecting the tax to a person who does not provide the documents required under (((~~c~~))) (b) of this subsection, and any seller who fails to retain the documents required under (((~~c~~))) (b) of this subsection for the period prescribed by RCW 82.32.070 is personally liable for the amount of tax due.

(ii) Any seller that makes sales without collecting the retail sales tax ((~~under~~)) pursuant to RCW 82.08.0264 and who has actual knowledge that the buyer's documentation required by (((~~c~~))) (b) of this subsection is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the buyer and the seller are liable for any penalties and interest assessable under chapter 82.32 RCW.

(4) **What are the tax consequences when a vehicle sold to a nonresident is delivered out-of-state?** A sale of a vehicle to a nonresident where the seller delivers the vehicle out-of-state is exempt from retail sales tax. If the vehicle is delivered to the buyer outside the state, the seller may also deduct the sale amount from the gross proceeds of sales for B&O tax purposes. The deductible amount must be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. The deduction must be identified on the deduction detail page of the return as an "interstate and foreign sales" deduction.

(a) **Requirements.** If a vehicle is delivered outside the state to a nonresident buyer, retail sales tax does not apply if:

(i) The seller, as required by the contract of sale, delivers possession of the vehicle to the buyer at a point outside Washington; and

(ii) The vehicle is not licensed or registered in this state. If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivery and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

(b) **Seller obligations; documentation.** The seller must properly document the following facts:

(i) The buyer's out-of-state address;

(ii) The vehicle is not licensed or registered in this state or the Washington state license plates have been removed from the vehicle before delivery;

(iii) Under the terms of the sales agreement, the seller is required to deliver the vehicle to the buyer at a point outside this state; and

(iv) The out-of-state delivery was actually made by the seller or by a common carrier acting as the seller's agent.

To comply with these requirements, the seller must retain a properly completed buyer's certificate and seller's certificate (out-of-state delivery). The seller's certificate must be signed by the person who actually delivers the vehicle to the buyer at the out-of-state location and may be completed only after delivery occurs.

(((~~(c) **Documentation when delivery is made by common carrier.** When a vehicle is delivered outside the state by common carrier acting as the seller's agent, no buyer's certificate or seller's certificate is required. Instead, the seller must retain:~~

~~(i) Evidence that the vehicle's license plates (if licensed in Washington) were removed; and~~

~~(ii) A signed copy of the bill of lading issued by the carrier. The bill of lading must show the seller as the consignor and indicate that the carrier agrees to transport the vehicle to a point outside the state.~~))

(5) **What forms should be used to document an exempt sale?** ((~~The~~)) Where the vehicle is delivered determines which two properly completed documents: "Buyer's Affidavit((~~,~~))" and "Seller's Certificate In-State Delivery," or "Buyer's Certificate Out-of-State Delivery((~~,~~))" and "Seller's Certificate Out-of-State Delivery" are necessary to substantiate exempt sales to nonresidents. Do not send the documents to the department((~~, but~~)); keep them as part of the seller's permanent records for five years. Without this documentation, claims that a transaction was exempt from tax will be disallowed.

Copies of the forms can be obtained:

• From the department's ((~~internet~~)) web site at ((~~http://~~))dor.wa.gov ((~~• By facsimile by calling fast fax at 360-705-6705 or 800-647-7706 (using menu options)~~))) or

• By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, Washington 98504-7478

Documents in substantially the same form as the department's forms will be accepted in lieu of the department's documents.

(a) **In-state delivery.** A sale with in-state delivery requires a completed buyer's affidavit and seller's certificate-in-state delivery.

(b) **Delivery out-of-state by seller.** A sale with out-of-state delivery by a seller requires a completed buyer's certificate and seller's certificate-out-of-state.

(c) **Delivery out-of-state by common carrier.** When a vehicle is delivered outside the state by common carrier acting as the seller's agent, the seller must retain:

(i) Evidence that the vehicle's license plates (if licensed in Washington) were removed; and

(ii) A signed copy of the bill of lading issued by the carrier. The bill of lading must show the seller as the consignor and indicate that the carrier agrees to transport the vehicle to a point outside the state; or

(iii) A seller's certificate out-of-state delivery signed by the person who delivers the vehicle and provides the name of the hauling company.

(6) **What are a seller's obligations to verify a buyer's statements on nonresidency?**

(a) ((~~Prior to July 22, 2007, completion of a buyer's affidavit documents the exempt nature of a sale under RCW 82.08.0264 unless there are facts that negate the presumption that the seller relied on the buyer's affidavit in good faith.~~)) The seller((~~, however,~~)) must exercise a reasonable degree of care in accepting statements regarding a buyer's nonresidence. If delivery occurs in-state, the seller must examine and retain a copy of at least one form of documentary evidence showing the buyer's out-of-state residence. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required is indicated, for example, in the following circumstances:

(i) If the seller knows that the buyer is living in Washington;

(ii) If the buyer gives a Washington address for the purpose of financing the purchase of the vehicle;

(iii) If, at the time of sale, arrangements are made for future servicing of the vehicle in the seller's shop and a Washington address or telephone number is shown for the shop customer; or

(iv) If the seller has ready access to any other information that discloses that the buyer ((~~may be~~)) is a resident of Washington.

(b) **What if the department questions the authenticity of the information provided by the buyer?** ((~~For sales completed on or after July 22, 2007,~~)) If the department has information indicating the buyer is a Washington resident, or if the addresses for the buyer shown on the documentation provided under subsection (3)(b) or (c) of this ((~~section~~)) rule are not the same, the department may contact the buyer to verify the buyer's eligibility for the exemption provided by RCW 82.08.0264. If the department subsequently determines the buyer was not eligible for an exemption, the department will pursue collection of the retail sales tax from the buyer. The seller will not be liable for the retail sales tax except as provided in subsection (3)(d)((~~(ii)~~)) of this ((~~section~~)) rule.

(7) **Do military personnel qualify for the nonresident exemptions?** A member of the armed services who is temporarily stationed in Washington is presumed to be a nonresident, unless that person was a resident of this state when enlisted or inducted. This presumption does not apply to a civilian employee of the armed services. Nonetheless, a sale to a nonresident member of the armed forces must meet all of the statutory requirements for a retail sales tax exemption or B&O tax deduction. If a vehicle sold to a member of the armed forces will remain in Washington for more than three months, retail sales tax is due on the sale, even if the vehicle is registered in the home state of the armed forces member.

(a) **Military temporary license.** In addition to the exemptions provided under RCW 82.08.0264, a member of the armed forces may alternatively qualify for the retail sales tax and use tax exemptions provided by RCW ((~~46.16.480~~)) 46.16A.340 if the member obtains a forty-five day nonresident military temporary ((~~license~~)) permit from the department of licensing ((~~under RCW 46.16.460~~)) and satisfies the requirements of RCW ((~~46.16.480~~)) 46.16A.340.

(b) **Additional documentation required.** In addition to the documentation otherwise required by this ((~~section~~)) rule, for a sale to a member of the armed forces a seller must retain a copy of military orders showing that the buyer:

(i) Is temporarily stationed in Washington and will leave within three months of the date of purchase; or

(ii) Is permanently reassigned to a new duty station outside Washington and will leave within three months of the date of purchase.

(c) **Military personnel of NATO-member nations.** Pursuant to treaty, a member of the armed forces of any NATO-member nation who is stationed in Washington is considered to be a nonresident for purposes of the RCW 82.08.0264 retail sales tax exemption. The buyer must meet all otherwise applicable requirements for exemption. In addition, the seller must retain proof of the buyer's military assignment in Washington as a member of a NATO-member nation's armed forces.

(8) **Are sales to residents of noncontiguous states exempt from Washington retail sales tax?** RCW 82.08.0269 exempts purchases of tangible personal property from the retail sales tax if the property is purchased for use in states, territories, and possessions of the United States that are not contiguous with any other state. However, the exemption only applies if, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or the purchaser's designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in a noncontiguous state, territory, or possession.

RCW 82.08.0269 applies to the sale of motor vehicles when the requirements stated above are met. Therefore, in addition to being exempt from retail sales tax under RCW 82.08.0264 (discussed above), a sale of a motor vehicle to a resident of a noncontiguous state, territory, or possession may qualify for exemption under RCW 82.08.0269. If so, the sale is exempt from retail sales tax but does not qualify for a B&O tax deduction. For more information on the requirements of the RCW 82.08.0269 exemption, including the documentation requirements, see WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(9) **Are sales to ((~~residents~~)) nonresidents of this state((~~s with no sales tax~~)) exempt from Washington retail sales tax?** RCW 82.08.0273 exempts purchases of tangible personal property from the retail sales tax if the purchaser is a resident of another state or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more. That statute does not apply to purchases of vehicles. Because RCW 82.08.0264 more specifically applies to the sale of vehicles, it takes precedence over RCW 82.08.0273. A ((~~resident~~)) nonresident of ((~~another~~)) this state ((~~or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more~~)) may purchase and take delivery of a vehicle in Washington free of retail sales tax only if the person meets the requirements of RCW 82.08.0264 ((~~or 82.08.0269~~)). For sales to residents of noncontiguous states, territories, and possessions see RCW 82.08.0269.

(10) **Examples.** The following examples identify a number of facts and then state a conclusion. 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. In each example concluding that the sale qualifies for a retail sales tax and/or B&O tax exemption, the Dealer must retain the documents required in subsection (3)(b) or (c) of this rule.

(a) Buyer purchases a vehicle from Dealer. Buyer provides identification indicating that Buyer is a resident of California and provides California license plates for the vehicle. However, Buyer also states that he intends to use the vehicle in the state of Washington for four months before returning to California. Buyer does not qualify for a sales tax exemption because Buyer will use the vehicle for more than three months in the state.

(b) Buyer provides proof of residency in Idaho; there are no contrary facts regarding Buyer's residency. Buyer completes the buyer's affidavit, stating that the vehicle is for use out-of-state. Buyer obtains and uses a trip permit issued under authority of RCW ((~~46.16.160~~)) 46.16A.320 to remove the vehicle from Washington. The Dealer completes a seller's certificate and certifies that the Dealer removed the Washington license plates before delivering the vehicle to Buyer. This sale qualifies for the retail sales tax exemption but not the B&O tax deduction.

(c) Buyer is a Washington resident, employed by out-of-state Corporation X. On behalf of Corporation X, Buyer purchases and accepts in-state delivery of a vehicle from Dealer. The vehicle will be used as a company car out-of-state and will not be used or garaged in Washington. Payment is made by corporate check. Buyer provides a trip permit for transport of the vehicle out of Washington. This sale qualifies for the retail sales tax exemption (but not for the B&O tax deduction) notwithstanding the Washington residency of its employee. ((~~The Dealer must record in its records the number of the corporate nonresident permit.~~))

(d) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. The sales contract requires Dealer to deliver the vehicle to Buyer in Anchorage, Alaska. Before shipping the vehicle, Dealer removes the vehicle's

Washington state license plates and retains a photocopy of the plates as evidence of the removal. Seller ships the vehicle to Alaska by common carrier. Seller retains a signed copy of the bill of lading, indicating the Seller as consignor and the Buyer as consignee. This sale qualifies for the retail sales tax exemption and a B&O tax deduction.

(e) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. Dealer delivers the vehicle to the Buyer at dockside in Seattle to be shipped to Anchorage, Alaska by common carrier. Dealer retains the exemption certificate and ((~~dock receipt~~)) documentation required by WAC 458-20-193. This sale qualifies for the retail sales tax exemption provided by RCW 82.08.0269 but not for a B&O tax deduction.

(f) Buyer is a member of the armed forces and provides a copy of her orders showing that she is temporarily stationed in Washington. Before entering military service, buyer resided in another state. Buyer purchases a vehicle from Dealer and licenses it in her home state, but intends to keep the vehicle in this state for over three months. This sale does not qualify for any exemption or deduction. If the vehicle were to be removed from the state within three months, the sale would qualify for the RCW 82.08.0264 retail sales tax exemption but not for a B&O tax deduction.

(g) Buyer owns homes in Washington and Arizona, spending summers in Washington and winters in Arizona. In October, Buyer purchases a vehicle from Dealer, asserting that he will immediately drive the vehicle to Arizona and license it in that state. Buyer presents an Arizona driver's license for identification and provides a trip permit to remove the vehicle from Washington. Dealer is aware that Buyer lives in Washington for a significant portion of each year. In such a case, the sale would not qualify for the retail sales tax exemption. Under these facts, Buyer has dual residency in Washington and Arizona for tax purposes.

(h) Buyer purchases a motorcycle from Dealer in Vancouver, Washington. The motorcycle is equipped for use on public highways. Buyer provides an Oregon driver's license and asserts that the motorcycle will be licensed in Oregon. Buyer also states that the motorcycle will only be used outside of Washington. Buyer places the motorcycle in the back of a truck for transport to Oregon. This sale does not qualify for any exemption or deduction. To qualify for the sales tax exemption, RCW 82.08.0264 requires the Buyer to obtain a trip permit or provide license plates from another state before removing the vehicle from Washington.

(11) **Buyer obligations when claiming exemption.** It is the buyer's responsibility to provide the seller with valid identification that entitles the buyer to purchase a motor vehicle, trailer, or camper exempt from retail sales tax as provided by RCW 82.08.0264.

(a) A buyer making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a seller, ((~~in order~~)) to purchase without paying retail sales tax a motor vehicle, trailer, or camper ((~~without paying retail sales tax~~)) is guilty of perjury under chapter 9A.72 RCW.

(b) Any buyer making tax exempt purchases under RCW 82.08.0264 by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of RCW 82.08.0264 is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

WSR 14-21-126

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed October 20, 2014, 7:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-086.

Title of Rule and Other Identifying Information: WAC 308-56A-455 Assembled and homemade vehicles.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on November 26, 2014, at 3:00 p.m.

Date of Intended Adoption: December 1, 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 November 25, 2014.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by November 25, 2014, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revises definition of assembled and homemade vehicles in accordance with suggestions from the Washington state patrol in order to more closely align with the best practices recommended by the American Association of Motor Vehicle Administrators.

Reasons Supporting Proposal: Improves clarity of the rule and aligns it with nationwide standards.

Statutory Authority for Adoption: RCW 46.01.110 and 46.12.560.

Statute Being Implemented: RCW 46.12.560.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark Holloway, Olympia, (360) 902-3846; Implementation and Enforcement: Toni Wilson, Olympia, (360) 902-3811.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3) and 34.05.310 (4)(b).

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).

October 20, 2014
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-08-080, filed 4/6/04, effective 5/7/04)

WAC 308-56A-455 Assembled and homemade vehicles. (1) **What constitutes an assembled vehicle?** An assembled vehicle is a vehicle that((:

~~(a) Has had the complete body or frame replaced with the body or frame from another commercially manufactured vehicle; or~~

~~(b) Had the body or frame cut in two and replaced with a major portion of the body or frame from another vehicle; or~~

~~(c) Has had a major modification so that the VIN no longer properly describes the vehicle; or~~

~~(d) Is a motorcycle on which the frame and engine are of different make or model years. An assembled vehicle is made from parts produced by recognized manufacturers for commercially produced vehicles, and can be recognized as one produced by a particular manufacturer~~)) has been constructed using a cab, body, or frame from two or more vehicles and has the same appearance as a vehicle that was manufactured under a specific year, make, and model by a manufacturer but the original vehicle identification number (VIN) no longer accurately describes the vehicle. Assembled vehicles do not include glider kits, custom ((~~built, replica,~~)) vehicles, street rods, salvage, or kit vehicles((~~, or trucks installed with a different bed~~)).

(2) **How is the model year determined for an assembled vehicle?** The Washington state patrol will determine the model year of an assembled vehicle upon inspection of the vehicle.

(3) **What constitutes a homemade vehicle?** A homemade vehicle is one that ((~~cannot visually be identified as produced by a particular manufacturer and is made primarily from fabricated parts. The make will be identified as homemade~~)) has been constructed from any combination of new, used, or homemade parts that does not resemble a vehicle that was manufactured under a specific year, make, and model by a manufacturer. This includes:

(a) A vehicle that has been structurally modified so that it does not have the same appearance as a similar vehicle from the same manufacturer;

(b) A vehicle that has been constructed entirely from homemade parts and materials not obtained from other vehicles; or

(c) A vehicle that has been constructed by using major component parts from one or more manufactured vehicles and cannot be identified as a specific make and model.

All homemade vehicles of a type requiring registration must be certified by the owner to meet all applicable federal motor vehicle safety standards in effect at the time construction is completed.

(4) **How is the model year determined for a homemade vehicle?** The Washington state patrol will determine the model year of a homemade vehicle upon inspection of the vehicle.

(5) **What documents must I submit with my application for a certificate of ((~~ownership~~)) title for an assembled or homemade vehicle?** You must submit the following documents with your application for certificate of ((~~ownership~~)) title:

(a) The certificate of ((~~ownership~~)) title or bills of sale for each vehicle or major component part used in the assembly or construction of the vehicle. The bills of sale must be notarized unless ((~~the seller is a licensed business~~)) purchased from an auto dealer or business licensed to sell auto parts. The bill(s) of sale must include:

(i) The names and addresses of the seller and purchaser;

(ii) A description of the part being sold, including the make, model and identification or serial number;

(iii) The date of sale;

(iv) The purchase price of the part; and

(v) The stock number if from a Washington licensed wrecker;

(b) A Washington state patrol inspection or inspection from other personnel authorized by the director verifying the vehicle identification number, make, model, and year; ((~~and~~))

(c) A completed declaration of value form; and

(d) A completed homemade/assembled vehicle use declaration form.

You may be required to apply for ownership in doubt as described in WAC 308-56A-210 if you do not have all the required documentation.

(6) **What is required ((~~if I must~~)) to remove, destroy, or conceal a vehicle identification number plate on a vehicle or major component part to be used on my assembled or homemade vehicle?** The vehicle or major component part containing the VIN plate must be presented to the Washington state patrol with the VIN plate intact. The WSP will remove the VIN plate and mark the vehicle or major component part so it can be identified when the assembled or homemade vehicle is ready for inspection.

WSR 14-21-129
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 20, 2014, 1:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-09-113.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?, 388-449-0035 How does the department assign severity ratings to my impairment?, 388-449-0060 Sequential evaluation process step II—How does the department review medical evidence to determine if I am eligible for benefits?, and 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?

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 November 25, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 26, 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 5:00 p.m., November 25, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 11, 2014, TTY (360) 664-6178, or (360) 664-6092, or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division, economic services administration, is proposing amendments via the regular rule-making process to four WACs. The proposed amendments are currently in effect via emergency adoption (WSR 14-14-080, filed on June 30, 2014). The proposed amendments update the ABD program disability standard as required by SB 6573, Laws of 2014, by increasing:

- The minimum disability duration from nine to twelve months; and
- Consideration of an individual's ability to perform past work from ten to fifteen years.

Reasons Supporting Proposal: These changes are in response to SB 6573, Laws of 2014, which restores the more restrictive ABD disability standard previously in place until December 31, 2013, by increasing the minimum duration from nine to twelve months and consideration of an individual's ability to perform past work from ten to fifteen years.

Statutory Authority for Adoption: SB 6573, chapter 218, Laws of 2014; and RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Erik Peterson, 712 Pear Street S.E., Olympia, WA 98501, (360) 725-4622.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rule amendments do 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 [by] 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."

October 14, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-040, filed 11/26/13, effective 1/1/14)

WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?

(1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" refer to the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Disabled" means the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which has lasted or can be expected to last for a continuous period of not less than ((~~nine~~)) twelve months with available treatment or result in death.

(d) "Physical impairment" means a diagnosable physical illness.

(e) "Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to alcohol or drug abuse or addiction.

(2) We determine if you are likely to be disabled when:

(a) You apply for ABD cash benefits;

(b) You become employed;

(c) You obtain work skills by completing a training program; or

(d) We receive new information that indicates you may be employable.

(3) We determine you are likely to be disabled if:

(a) You are determined to meet SSA disability criteria by the Social Security Administration (SSA);

(b) You are determined to meet SSA disability criteria by disability determination services (DDDS) based on the most recent DDDS determination;

(c) The Social Security Administration (SSA) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for long-term care services from aging and long-term support administration for a medical condition that is expected to last ((~~nine~~)) twelve months or more or result in death; or

(e) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1 considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are likely to meet or equal a listed impairment under Social Security's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(4) If you have a physical or mental impairment and you are impaired by alcohol or drug addiction and do not meet the other disability criteria in subsection (2)(a) through (d) above, we decide if you are eligible for ABD cash by applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You aren't eligible for ABD cash benefits if you are disabled primarily because of alcoholism or drug addiction.

(5) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions such

as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting, maintaining appropriate behavior, and adapting to changes in a routine work setting.

(6) We determine you are not likely to meet SSI disability criteria if SSA denied your application for SSI or Social Security Disability Insurance (SSDI) based on disability in the last twelve months unless:

(a) You file a timely appeal with SSA;

(b) SSA decides you have good cause for a late appeal; or

(c) You give us medical evidence of a potentially disabling condition that SSA did not consider or medical evidence confirming your condition has deteriorated.

AMENDATORY SECTION (Amending WSR 13-24-040, filed 11/26/13, effective 1/1/14)

WAC 388-449-0035 How does the department assign severity ratings to my impairment? (1) "Severity rating" is a rating of the extent of your impairment and how it impacts your ability to perform basic work activities. The following chart provides a description of limitations on work activities and the severity ratings assigned to each.

Effect on Work Activities	Degree of Impairment	Numerical Value
(a) There is no effect on your performance of one or more basic work-related activities.	None	1
(b) There is no significant limit on your performance of one or more basic work-related activities.	Mild	2
(c) There are significant limits on your performance of one or more basic work-related activities.	Moderate	3
(d) There are very significant limits on your performance of one or more basic work-related activities.	Marked	4
(e) You are unable to perform basic work-related activities.	Severe	5

(2) We use the description of how your condition impairs your ability to perform work activities given by the acceptable medical source or your treating provider, and review other evidence you provide, to establish severity ratings when the impairments are supported by, and consistent with, the objective medical evidence.

(3) A contracted doctor reviews your medical evidence and the ratings assigned to your impairment when:

(a) The medical evidence indicates functional limitations consistent with at least a moderate physical or mental health impairment;

(b) Your impairment has lasted or is expected to last, ((~~nine~~)) twelve months or more with available medical treatment; and

(c) You are not an active ABD recipient previously determined likely to be disabled as defined in WAC 388-449-0010 through 388-449-0100.

(4) The contracted doctor reviews your medical evidence, severity rating, and functional assessment to determine whether:

(a) The Medical evidence is objective and sufficient to support the findings of the provider;

(b) The description of the impairment(s) is supported by the medical evidence; and

(c) The severity rating, duration, and assessment of functional limitations assigned by DSHS are consistent with the medical evidence.

(5) If the medical provider's description of your impairment(s) is not consistent with the objective evidence, we will:

(a) Assign a severity rating, duration, and functional limitations consistent with the objective medical evidence; and

(b) Clearly describe why we rejected the medical evidence provider's opinion; and

(c) Identify the medical evidence used to make the determination.

AMENDATORY SECTION (Amending WSR 13-24-040, filed 11/26/13, effective 1/1/14)

WAC 388-449-0060 Sequential evaluation process step II—How does the department review medical evidence to determine if I am eligible for benefits? When we receive your medical evidence, we review it to determine if it is sufficient to decide whether your circumstances meet disability requirements.

(1) We require written medical evidence to determine disability. The medical evidence must:

(a) Contain sufficient information as described under WAC 388-449-0015;

(b) Be written by an acceptable medical source or treating provider described in WAC 388-449-0010;

(c) Document the existence of a potentially disabling condition by an acceptable medical source described in WAC 388-449-0010; and

(d) Document the impairment has lasted or is expected to last ((~~nine~~)) twelve continuous months or more with available treatment, or result in death.

(2) If the information received isn't clear, we may require more information before we determine whether you meet ABD disability requirements. As examples, we may require you to get more medical tests or be examined by a medical specialist.

(3) We deny disability if:

(a) We don't have evidence that your impairment is of at least moderate severity as defined in WAC 388-449-0035, 388-449-0040, 388-449-0045, or 388-449-0050;

(b) Your impairment hasn't lasted or isn't expected to last ((~~nine~~)) twelve or more months with available treatment or result in death; or

(c) We have evidence drug or alcohol abuse or addiction is material to your impairment(s).

AMENDATORY SECTION (Amending WSR 13-24-040, filed 11/26/13, effective 1/1/14)

WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work? (1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020 and 388-449-0030, to determine if you can do work you have done in the past.

(2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:

(a) Defined as substantial gainful activity per WAC 388-449-0005;

(b) You have performed in the past ((~~ten~~)) fifteen years; and

(c) You performed long enough to acquire the knowledge and skills necessary to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation, we compare:

(a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles; and

(b) Current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.

(4) We deny disability when we determine that you are able to perform any of your relevant past work.

(5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.

WSR 14-21-134
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed October 20, 2014, 3:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-110.

Title of Rule and Other Identifying Information: The department is considering adding new sections and amending the following sections in chapter 388-76 WAC, Adult family homes: WAC 388-76-10000 Definitions, 388-76-10037 License requirements—Multiple adult family homes—Additional homes, 388-76-10125 License—May be denied, 388-76-10130 Qualifications—Provider, entity representative and resident manager, 388-76-10146 Qualifications—Training and home care aide certification, 388-76-10315 Resident record—Required, 388-76-10525 Resident rights—Description, 388-76-10535 Resident rights—Notice of change to services, 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits, 388-76-10595 Resident rights—Advocacy access and visitation rights, 388-76-10615 Resident rights—Transfer and discharge, 388-76-10925 Disclosure of inspection and complaint investigation reports, 388-76-10935 Washington protection and advocacy—Long-term care ombudsman—Official duties—Penalty for interference, 388-76-10960 Remedies—Department may impose remedies, 388-76-10975 Remedies—Specific—Civil penalties, 388-76-10980 Remedies—Specific—Stop placement—Admissions prohibited; and other related rules as appropriate.

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 December 9, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 10, 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 5:00 p.m., December 9, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 25, 2014, TTY (360) 664-6178 or (360) 664-6092 or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to comply with and be consistent with newly passed state laws: SHB 1629 Home care aides—Credentialing and continuing education, EHB 1677 Adult family homes—Multiple facility operators, SHB 1686 K-12 Schools—High school equivalency certificates, SSB 5077 Statutes—Gender-neutral terms, SB 5510 Vulnerable adults—Abuse, and SSB 5630 Vulnerable adults—Adult family homes. In additional [addition] the department is amending rules to comply with SHB 2056 Assisted living facilities, passed (chapter 10, Laws of 2012) in the 2012 legislative session, which change the terminology of "boarding home" to assisted living facility.

Reasons Supporting Proposal: The department is amending these rules to comply with and be consistent with newly passed state laws.

Statutory Authority for Adoption: Chapter 70.128 RCW.

Statute Being Implemented: Chapter 70.128 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: Christi Pederson, P.O. Box 45600, Olympia, WA 98513, (360) 725-3204; Implementation: Carl Walters, P.O. Box 45600, Olympia, WA 98513, (360) 725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98513, (360) 725-2403.

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

025(3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

October 16, 2014
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-22 issue of the Register.

WSR 14-21-135
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 13-13—Filed October 20, 2014, 4:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-076.

Title of Rule and Other Identifying Information: Ecology proposes to amend an existing rule, chapter 173-441 WAC, Reporting of emissions of greenhouse gases.

Hearing Location(s): Ecology is holding one public hearing on this rule proposal. The hearing will begin with a short presentation followed by a question and answer (Q&A) session. Testimony will start after the Q&A session. Comments may be provided orally by those who attend in person or via the webinar. Staff will also accept written comments submitted at the hearing but **not** via the webinar.

Date: December 3, 2014.

Time: 10:00 a.m.

Location: Department of Ecology Headquarters, 300 Desmond Drive S.E., Lacey, WA 98503.

Directions: http://www.ecy.wa.gov/directory_hq.html.

Webinar: Ecology is also offering the presentation, Q&A session, and public hearing through a webinar. A webinar is an online meeting forum that can be accessed from any computer or smart phone with an internet connection. For more information about the webinar and instructions on how to join and participate through the webinar, visit http://www.ecy.wa.gov/programs/air/rules/webinars.htm.

Comments: Comments may be provided at the hearing in the following ways:

- In person:
  - o Oral testimony.
  - o Written comments.
- Through the webinar:
  - o Oral testimony only.

Date of Intended Adoption: January 20, 2015.

Submit Written Comments to: Stacey Callaway, P.O. Box 47600, Olympia, WA 98504-7600, e-mail AQComments@ecy.wa.gov, fax (360) 407-7534, by December 10, 2014.

Assistance for persons with disabilities: 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: The Washington state department of ecology (ecology) proposes to amend chapter 173-441 WAC, Reporting of emissions of greenhouse gases, in order to maintain consistency with the United States Environmental Protection Agency's (EPA) greenhouse gas reporting program, as required by RCW 70.94.151. The following are examples of the proposed amendments:

- Revising the global warming potentials (GWPs) in WAC 173-441-040.
- Updating calculation and monitoring methods.
- Making minor streamlining revisions to reporting requirements.
- Correcting minor errors and improving readability.

Ecology is not changing requirements established in chapter 173-441 WAC for transportation fuel suppliers or the following elements pertaining to facilities: Reporting threshold, confidential business information, or fees.

Reasons Supporting Proposal: Ecology is required by statute to periodically update chapter 173-441 WAC to maintain consistency with EPA's greenhouse gas reporting program which has been amended multiple times since chapter 173-441 WAC was adopted in 2010. Keeping ecology's rules current with EPA increases efficiency by maximizing data uniformity at the state and federal level, utilizing the most up-to-date calculation methods based on a national standard, and enabling Washington reporters to continue using EPA's online electronic reporting tool.

Statutory Authority for Adoption: Chapter 70.235 RCW, Limiting greenhouse gas emissions and chapter 70.94 RCW, Washington Clean Air Act.

Statute Being Implemented: Chapter 70.235 RCW, Limiting greenhouse gas emissions and chapter 70.94 RCW, Washington Clean Air Act.

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

Name of Proponent: Department of ecology air quality program, governmental.

Name of Agency Personnel Responsible for Drafting: Stacey Callaway, Lacey, Washington, (360) 407-7528; Implementation and Enforcement: Neil Caudill, Lacey, Washington, (360) 407-6811.

No small business economic impact statement has been prepared under chapter 19.85 RCW. As found in research supporting the preliminary cost-benefit and least-burdensome alternative analyses, the proposed rule amendments do not impose costs on existing businesses in an industry. The rule making, therefore, is not subject to the small business economic impact statement requirement.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kasia Patora, Economics and Regulatory Research, Department of Ecology, P.O. Box 47600, Lacey,

WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail Kasia.Patora@ecy.wa.gov.

October 20, 2014
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-010 Scope. This rule establishes mandatory greenhouse gas (GHG) reporting requirements for owners and operators of certain facilities that directly emit GHG as well as for certain suppliers of liquid motor vehicle fuel, special fuel, or aircraft fuel. For suppliers, the GHGs reported are the quantity that would be emitted from the complete combustion or oxidation of the products supplied.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **Definitions specific to this chapter:**

(a) "Biomass" means non-fossilized and biodegradable organic material originating from plants, animals, or microorganisms, including products, by-products, residues((,)) and waste from agriculture, forestry, and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material.

(b) "Carbon dioxide equivalent((s))" or "CO_2e" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(c) "Department of licensing" or "DOL" means the Washington state department of licensing.

(d) "Director" means the director of the department of ecology.

(e) "Ecology" means the Washington state department of ecology.

(f) "Facility" unless otherwise specified in any subpart of 40 C.F.R. Part 98 as adopted ((~~or proposed by December 1, 2010~~)) by October 1, 2014, means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right of way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

(g) "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Beginning on January 1, 2012, "greenhouse gas" also includes any other gas or gases designated by ecology by rule in Table A-1 in WAC 173-441-040.

(h) "Person" includes:

(i) An owner or operator, as those terms are defined by the United States Environmental Protection Agency in its mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted ((~~or proposed by December 1, 2010~~)) by October 1, 2014; and

(ii) A supplier.

(i) "Supplier" means any person who is:

(i) A motor vehicle fuel supplier or a motor vehicle fuel importer, as those terms are defined in RCW 82.36.010;

(ii) A special fuel supplier or a special fuel importer, as those terms are defined in RCW 82.38.020; or

(iii) A distributor of aircraft fuel, as the term is defined in RCW 82.42.010.

(2) **Definitions specific to suppliers.** Suppliers must use the definitions found in the following regulations unless the definition is in conflict with a definition found in subsection (1) of this section. These definitions do not apply to facilities.

(a) WAC 308-72-800;

(b) WAC 308-77-005; and

(c) WAC 308-78-010.

(3) **Definitions from 40 C.F.R. Part 98.** For those terms not listed in subsection (1) or (2) of this section, the definitions found in 40 C.F.R. § 98.6 or a subpart as adopted in WAC 173-441-120, as adopted ((~~or proposed by December 1, 2010~~)) by October 1, 2014, are adopted by reference as modified in WAC 173-441-120(2).

(4) **Definitions from chapter 173-400 WAC.** If no definition is provided in subsections (1) through (3) in this section, use the definition found in chapter 173-400 WAC.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-030 Applicability. The GHG reporting requirements and related monitoring, recordkeeping, and reporting requirements of this chapter apply to the owners and operators of any facility that meets the requirements of subsection (1) of this section; and any supplier that meets the requirements of subsection (2) of this section. In determining whether reporting is required, the requirements of subsection (1) must be applied independently of the requirements of subsection (2). Research and development activities are not considered to be part of any source category defined in this chapter.

(1) **Facility reporting.** Reporting is mandatory for an owner or operator of any facility located in Washington state with total GHG emissions that exceeds the reporting threshold defined in (a) of this subsection. GHG emissions from all applicable source categories listed in WAC 173-441-120 at the facility must be included when determining whether emissions from the facility meet the reporting threshold.

(a) **Facility reporting threshold.** Any facility that emits ten thousand metric tons CO_2e or more per calendar year in total GHG emissions from all applicable source categories listed in WAC 173-441-120 exceeds the reporting threshold.

(b) **Calculating facility emissions for comparison to the threshold.** To calculate GHG emissions for comparison to the reporting threshold, the owner or operator must:

(i) Calculate the total annual emissions of each GHG in metric tons from all applicable source categories that are listed and defined in WAC 173-441-120. The GHG emissions must be calculated using the calculation methodologies specified in WAC 173-441-120 and available company records.

(ii) Include emissions of all GHGs that are listed in Table A-1 of WAC 173-441-040, including all GHG emissions from the combustion of biomass and all fugitive releases of GHG emissions from biomass, calculated as provided in the calculation methods referenced in Table 120-1.

(iii) Sum the emissions estimates for each GHG and calculate metric tons of CO_2e using Equation A-1 of this subsection.

$$CO_2e = \sum_{i=1}^{n} GHG_i \times GWP_i \quad (Eq. A-1)$$

Where:

CO_2e	=	Carbon dioxide equivalent, metric tons/year.
GHG_i	=	Mass emissions of each greenhouse gas listed in Table A-1 of WAC 173-441-040, metric tons/year.
GWP_i	=	Global warming potential for each greenhouse gas from Table A-1 of WAC 173-441-040.
n	=	The number of greenhouse gases emitted.

(iv) Include in the emissions calculation any CO_2 that is captured for transfer ((~~off-site~~)) off site.

((~~(v) Research and development activities are not considered to be part of any source category defined in this chapter.~~))

(2) **Suppliers.** Reporting is mandatory for any supplier required to file periodic tax reports to DOL and has total carbon dioxide emissions that exceed the reporting threshold defined in (a) of this subsection.

(a) **Supplier reporting threshold.** Any supplier that supplies applicable fuels that are reported to DOL as sold in Washington state of which the complete combustion or oxidation would result in total calendar year emissions of ten thousand metric tons or more of carbon dioxide exceeds the reporting threshold.

(b) **Calculating supplier emissions for comparison to the threshold.** To calculate CO_2 emissions for comparison to the reporting threshold, a supplier must:

(i) Base its emissions on the applicable fuel quantities as established in WAC 173-441-130(1) and reported to DOL. A supplier must apply the mass in metric tons per year of CO_2 that would result from the complete combustion or oxidation of these fuels towards the reporting threshold.

(ii) Calculate the total annual carbon dioxide emissions in metric tons from all applicable fuel quantities and fuel types as established in WAC 173-441-130(1) and reported to DOL. The CO_2 emissions must be calculated using the calculation methodologies specified in WAC 173-441-130 and data reported to DOL.

(iii) Only include emissions of carbon dioxide associated with the complete combustion or oxidation of the applicable fuels. Include all CO_2 emissions from the combustion of biomass fuels.

((~~(iv) Research and development activities are not considered to be part of any source category defined in this chapter.~~))

(3) **Applicability over time.** A person that does not meet the applicability requirements of either subsection (1) or (2) of this section is not subject to this rule. Such a person would become subject to the rule and the reporting requirements of this chapter if they exceed the applicability requirements of subsection (1) or (2) of this section at a later time. Thus, persons should reevaluate the applicability to this chapter (including the revising of any relevant emissions calculations or other calculations) whenever there is any change that could cause a facility or supplier to meet the applicability requirements of subsection (1) or (2) of this section. Such changes include, but are not limited to, process modifications, increases in operating hours, increases in production, changes in fuel or raw material use, addition of equipment, facility expansion, and changes to this chapter.

(4) **Voluntary reporting.** A person may choose to voluntarily report to ecology GHG emissions that are not required to be reported under subsection (1) or (2) of this section. Persons voluntarily reporting GHG emissions must use the methods established in WAC 173-441-120(3) and 173-441-130 to calculate any voluntarily reported GHG emissions.

(5) **Reporting requirements when emissions of greenhouse gases fall below reporting thresholds.** Except as provided in this subsection, once a facility or supplier is subject to the requirements of this chapter, the person must continue for each year thereafter to comply with all requirements of this chapter, including the requirement to submit annual GHG reports (annual GHG reports, GHG report, emissions report, annual report), even if the facility or supplier does not meet the applicability requirements in subsection (1) or (2) of this section in a future year.

(a) If reported emissions are less than ten thousand metric tons CO_2e per year for five consecutive years, then the person may discontinue reporting as required by this chapter provided that the person submits a notification to ecology that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification ((~~shall~~)) must be submitted no later than ((~~March 31st~~)) the report submission due date, specified in WAC 173-441-050(2), of the year immediately following the fifth consecutive year of emissions less than ten thousand tons CO_2e per year. The person must maintain the corresponding records required under WAC 173-441-050(6) for each of the five consecutive years and retain such records for three years following the year that reporting was discontinued. The person must resume reporting if annual emissions in any future cal-

endar year increase above the thresholds in subsection (1) or (2) of this section.

(b) If reported emissions are less than five thousand metric tons CO_2e per year for three consecutive years, then the person may discontinue reporting as required by this chapter provided that the person submits a notification to ecology that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification ((~~shall~~)) must be submitted no later than ((~~March 31st~~)) the report submission due date, specified in WAC 173-441-050(2), of the year immediately following the third consecutive year of emissions less than five thousand tons CO_2e per year. The person must maintain the corresponding records required under WAC 173-441-050(6) for each of the three consecutive years and retain such records for three years following the year that reporting was discontinued. The person must resume reporting if annual emissions in any future calendar year increase above the thresholds in subsection (1) or (2) of this section.

(c) If the operations of a facility or supplier are changed such that all applicable GHG-emitting processes and operations listed in WAC 173-441-120 and 173-441-130 cease to operate, then the person is exempt from reporting in the years following the year in which cessation of such operations occurs, provided that the person submits a notification to ecology that announces the cessation of reporting and certifies to the closure of all GHG-emitting processes and operations no later than the report submission due date, specified in WAC 173-441-050(2), of the year following such changes. This provision does not apply to seasonal or other temporary cessation of operations. This provision does not apply to facilities with municipal solid waste landfills, industrial waste landfills, or to underground coal mines. The person must resume reporting for any future calendar year during which any of the GHG-emitting processes or operations resume operation.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-040 Greenhouse gases. (1) **Greenhouse gases.** Table A-1 of this section lists the GHGs regulated under this chapter and their global warming potentials.

(2) **CO_2e conversion.** Use Equation A-1 of WAC 173-441-030 (1)(b)(iii) and the global warming potentials (GWP) listed in Table A-1 of this section to convert emissions into CO_2e.

Table A-1:
Global Warming Potentials (100-Year Time Horizon)

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
Carbon dioxide	124-38-9	CO_2	1	1
Methane	74-82-8	CH_4	21	25
Nitrous oxide	10024-97-2	N_2O	310	298
((~~HFC-23~~	~~75-46-7~~	~~CHF_3~~	~~11,700~~	
~~HFC-32~~	~~75-10-5~~	~~CH_2F_2~~	~~650~~	
~~HFC-41~~	~~593-53-3~~	~~CH_3F~~	~~150~~	
~~HFC-125~~	~~354-33-6~~	~~C_2HF_5~~	~~2,800~~	
~~HFC-134~~	~~359-35-3~~	~~$C_2H_2F_4$~~	~~1,000~~	
~~HFC-134a~~	~~811-97-2~~	~~CH_2FCF_3~~	~~1,300~~	
~~HFC-143~~	~~430-66-0~~	~~$C_2H_3F_3$~~	~~300~~	
~~HFC-143a~~	~~420-46-2~~	~~$C_2H_3F_3$~~	~~3,800~~	
~~HFC-152~~	~~624-72-6~~	~~CH_2FCH_2F~~	~~53~~	
~~HFC-152a~~	~~75-37-6~~	~~CH_3CHF_2~~	~~140~~	
~~HFC-161~~	~~353-36-6~~	~~CH_3CH_2F~~	~~12~~	
~~HFC-227ea~~	~~431-89-0~~	~~C_3HF_7~~	~~2,900~~	
~~HFC-236cb~~	~~677-56-5~~	~~$CH_2FCF_2CF_3$~~	~~1,340~~	
~~HFC-236ea~~	~~431-63-0~~	~~CHF_2CHFCF_3~~	~~1,370~~	
~~HFC-236fa~~	~~690-39-1~~	~~$C_3H_2F_6$~~	~~6,300~~	

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
~~HFC-245ca~~	~~679-86-7~~	~~$C_3H_3F_5$~~	~~560~~	
~~HFC-245fa~~	~~460-73-1~~	~~$CHF_2CH_2CF_3$~~	~~1,030~~	
~~HFC-365mfc~~	~~406-58-6~~	~~$CH_3CF_2CH_2CF_3$~~	~~794~~	
~~HFC-43-10mee~~	~~138495-42-8~~	~~$CF_3CFHCFHCF_2CF_3$~~	~~1,300~~	
~~All other HFCs~~	~~NA~~	~~NA~~	~~Contact ecology~~	
~~Sulfur hexafluoride~~	~~2551-62-4~~	~~SF_6~~	~~23,900~~	
~~Trifluoromethyl sulphur pentafluoride~~	~~373-80-8~~	~~SF_5CF_3~~	~~17,700~~	
~~Nitrogen trifluoride~~	~~7783-54-2~~	~~NF_3~~	~~17,200~~	
~~PFC-14 (Perfluoromethane)~~	~~75-73-0~~	~~CF_4~~	~~6,500~~	
~~PFC-116 (Perfluoroethane)~~	~~76-16-4~~	~~C_2F_6~~	~~9,200~~	
~~PFC-218 (Perfluoropropane)~~	~~76-19-7~~	~~C_3F_8~~	~~7,000~~	
~~Perfluorocyclopropane~~	~~931-91-9~~	~~c-C_3F_6~~	~~17,340~~	
~~PFC-3-1-10 (Perfluorobutane)~~	~~355-25-9~~	~~C_4F_{10}~~	~~7,000~~	
~~Perfluorocyclobutane~~	~~115-25-3~~	~~c-C_4F_8~~	~~8,700~~	
~~PFC-4-1-12 (Perfluoropentane)~~	~~678-26-2~~	~~C_5F_{12}~~	~~7,500~~	
~~PFC-5-1-14 (Perfluorohexane)~~	~~355-42-0~~	~~C_6F_{14}~~	~~7,400~~	
~~PFC-9-1-18~~	~~306-94-5~~	~~$C_{10}F_{18}$~~	~~7,500~~	
~~All other PFCs~~	~~NA~~	~~NA~~	~~Contact ecology~~	
~~HCFE-235da2 (Isoflurane)~~	~~26675-46-7~~	~~$CHF_2OCHClCF_3$~~	~~350~~	
~~HFE-43-10pcce (H-Galden 1040x)~~	~~E1730133~~	~~$CHF_2OCF_2OC_2F_4OCHF_2$~~	~~1,870~~	
~~HFE-125~~	~~3822-68-2~~	~~CHF_2OCF_3~~	~~14,900~~	
~~HFE-134~~	~~1691-17-4~~	~~CHF_2OCHF_2~~	~~6,320~~	
~~HFE-143a~~	~~421-14-7~~	~~CH_3OCF_3~~	~~756~~	
~~HFE-227ea~~	~~2356-62-9~~	~~$CF_3CHFOCF_3$~~	~~1,540~~	
~~HFE-236ca12 (HG-10)~~	~~78522-47-1~~	~~$CHF_2OCF_2OCHF_2$~~	~~2,800~~	
~~HFE-236ea2 (Desflurane)~~	~~57041-67-5~~	~~$CHF_2OCHFCF_3$~~	~~989~~	
~~HFE-236fa~~	~~20193-67-3~~	~~$CF_3CH_2OCF_3$~~	~~487~~	
~~HFE-245cb2~~	~~22410-44-2~~	~~$CH_3OCF_2CF_3$~~	~~708~~	
~~HFE-245fa1~~	~~84011-15-4~~	~~$CHF_2CH_2OCF_3$~~	~~286~~	
~~HFE-245fa2~~	~~1885-48-9~~	~~$CHF_2OCH_2CF_3$~~	~~659~~	
~~HFE-254cb2~~	~~425-88-7~~	~~$CH_3OCF_2CHF_2$~~	~~359~~	
~~HFE-263fb2~~	~~460-43-5~~	~~$CF_3CH_2OCH_3$~~	~~11~~	
~~HFE-329mcc2~~	~~67490-36-2~~	~~$CF_3CF_2OCF_2CHF_2$~~	~~919~~	
~~HFE-338mcf2~~	~~156053-88-2~~	~~$CF_3CF_2OCH_2CF_3$~~	~~552~~	
~~HFE-338pcc13 (HG-01)~~	~~188690-78-0~~	~~$CHF_2OCF_2CF_2OCHF_2$~~	~~1,500~~	

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
~~HFE-347mcc3~~	~~28523-86-6~~	~~$CH_3OCF_2CF_2CF_3$~~	~~575~~	
~~HFE-347mcf2~~	~~E1730135~~	~~$CF_3CF_2OCH_2CHF_2$~~	~~374~~	
~~HFE-347pcf2~~	~~406-78-0~~	~~$CHF_2CF_2OCH_2CF_3$~~	~~580~~	
~~HFE-356mec3~~	~~382-34-3~~	~~$CH_3OCF_2CHFCF_3$~~	~~101~~	
~~HFE-356pcc3~~	~~160620-20-2~~	~~$CH_3OCF_2CF_2CHF_2$~~	~~110~~	
~~HFE-356pcf2~~	~~E1730137~~	~~$CHF_2CH_2OCF_2CHF_2$~~	~~265~~	
~~HFE-356pcf3~~	~~35042-99-0~~	~~$CHF_2OCH_2CF_2CHF_2$~~	~~502~~	
~~HFE-365mcf3~~	~~378-16-5~~	~~$CF_3CF_2CH_2OCH_3$~~	~~11~~	
~~HFE-374pc2~~	~~512-51-6~~	~~$CH_3CH_2OCF_2CHF_2$~~	~~557~~	
~~HFE-449sl (HFE-7100) Chemical blend~~	~~163702-07-6 163702-08-7~~	~~$C_4F_9OCH_3$ $(CF_3)_2CFCF_2OCH_3$~~	~~297~~	
~~HFE-569sf2 (HFE-7200) Chemical blend~~	~~163702-05-4 163702-06-5~~	~~$C_4F_9OC_2H_5$ $(CF_3)_2CFCF_2OC_2H_5$~~	~~59~~	
~~Sevoflurane~~	~~28523-86-6~~	~~$CH_2FOCH(CF_3)_2$~~	~~345~~	
~~HFE-356mm1~~	~~13171-18-1~~	~~$(CF_3)_2CHOCH_3$~~	~~27~~	
~~HFE-338mmz1~~	~~26103-08-2~~	~~$CHF_2OCH(CF_3)_2$~~	~~380~~	
~~(Octafluorotetramethy-lene) hydroxymethyl group~~	~~NA~~	~~X-$(CF_2)_4$CH(OH)-X~~	~~73~~	
~~HFE-347mmy1~~	~~22052-84-2~~	~~$CH_3OCF(CF_3)_2$~~	~~343~~	
~~Bis(trifluoromethyl) methanol~~	~~920-66-1~~	~~$(CF_3)_2CHOH$~~	~~195~~	
~~2,2,3,3,3-pentafluoropropanol~~	~~422-05-9~~	~~$CF_3CF_2CH_2OH$~~	~~42~~	
~~PFPMIE~~	~~NA~~	~~$CF_3OCF(CF_3)CF_2OCF_2OCF_3$~~	~~10,300~~))	
Fully Fluorinated GHGs				
Sulfur hexafluoride	2551-62-4	SF_6	23,900	22,800
Trifluoromethyl sulphur pentafluoride	373-80-8	SF_5CF_3	17,700	17,700
Nitrogen trifluoride	7783-54-2	NF_3	17,200	17,200
PFC-14 (Perfluoromethane)	75-73-0	CF_4	6,500	7,390
PFC-116 (Perfluoroethane)	76-16-4	C_2F_6	9,200	12,200
PFC-218 (Perfluoropropane)	76-19-7	C_3F_8	7,000	8,830
Perfluorocyclopropane	931-91-9	C-C_3F_6	17,340	17,340
PFC-3-1-10 (Perfluorobutane)	355-25-9	C_4F_{10}	7,000	8,860
PFC-318 (Perfluorocyclobutane)	115-25-3	C-C_4F_8	8,700	10,300
PFC-4-1-12 (Perfluoropentane)	678-26-2	C_5F_{12}	7,500	9,160
PFC-5-1-14 (Perfluorohexane, FC-72)	355-42-0	C_6F_{14}	7,400	9,300
PFC-9-1-18	306-94-5	$C_{10}F_{18}$	7,500	7,500

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			2012-2013	≥ 2014[3,4]
PFC-6-1-12 (Hexadecafluoroheptane)	335-57-9	C_7F_{16}; $CF_3(CF_2)_5CF_3$	7,820	7,820
PFC-7-1-18 (Octadecafluorooctane)	307-34-6	C_8F_{18}; $CF_3(CF_2)_6CF_3$	7,620	7,620
PFPMIE (HT-70)	NA	$CF_3OCF(CF_3)CF_2OCF_2OCF_3$	10,300	10,300
Perfluorodecalin (cis)	60433-11-6	Z-$C_{10}F_{18}$	7,236	7,236
Perfluorodecalin (trans)	60433-12-7	E-$C_{10}F_{18}$	6,288	6,288
Saturated Hydrofluorocarbons (HFCs)				
HFC-23	75-46-7	CHF_3	11,700	14,800
HFC-32	75-10-5	CH_2F_2	650	675
HFC-41	593-53-3	CH_3F	150	92
HFC-125	354-33-6	C_2HF_5	2,800	3,500
HFC-134	359-35-3	$C_2H_2F_4$	1,000	1,100
HFC-134a	811-97-2	CH_2FCF_3	1,300	1,430
HFC-143	430-66-0	$C_2H_3F_3$	300	353
HFC-143a	420-46-2	$C_2H_3F_3$	3,800	4,470
HFC-152	624-72-6	CH_2FCH_2F	53	53
HFC-152a	75-37-6	CH_3CHF_2	140	124
HFC-161	353-36-6	CH_3CH_2F	12	12
HFC-227ca (1,1,1,2,2,3,3-Heptafluoropropane)	2252-84-8	$CF_3CF_2CHF_2$	2,640	2,640
HFC-227ea	431-89-0	C_3HF_7	2,900	3,220
HFC-236cb	677-56-5	$CH_2FCF_2CF_3$	1,340	1,340
HFC-236ea	431-63-0	CHF_2CHFCF_3	1,370	1,370
HFC-236fa	690-39-1	$C_3H_2F_6$	6,300	9,810
HFC-245ca	679-86-7	$C_3H_3F_5$	560	693
HFC-245cb (1,1,1,2,2-Pentafluoropropane)	1814-88-6	$CF_3CF_2CH_3$	4,620	4,620
HFC-245ea (1,1,2,3,3-Pentafluoropropane)	24270-66-4	$CHF_2CHFCHF_2$	235	235
HFC-245eb (1,1,1,2,3-Pentafluoropropane)	431-31-2	$CH_2FCHFCF_3$	290	290
HFC-245fa	460-73-1	$CHF_2CH_2CF_3$	1,030	1,030
HFC-263fb (1,1,1-Trifluoropropane)	421-07-8	$CH_3CH_2CF_3$	76	76
HFC-272ca (2,2-Difluoropropane)	420-45-1	$CH_3CF_2CH_3$	144	144
HFC-329p (1,1,1,2,2,3,3,4,4-Nonafluorobutane)	375-17-7	$CHF_2CF_2CF_2CF_3$	2,360	2,360

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
HFC-365mfc	406-58-6	$CH_3CF_2CH_2CF_3$	794	794
HFC-43-10mee	138495-42-8	$CF_3CFHCFHCF_2CF_3$	1,300	1,640
Partially Segregated Saturated Hydrofluoroethers (HFEs) and Hydrochlorofluoroethers (HCFEs)				
HFE-143a	421-14-7	CH_3OCF_3	756	756
HFE-245cb2	22410-44-2	$CH_3OCF_2CF_3$	708	708
HFE-254cb2	425-88-7	$CH_3OCF_2CHF_2$	359	359
HFE-263fb2	460-43-5	$CF_3CH_2OCH_3$	11	11
HFE-263m1; R-E-143a (1,1,2,2-Tetrafluoro-1-(trifluoromethoxy)ethane)	690-22-2	$CF_3OCH_2CH_3$	NA	29*
HFE-347mcc3 (HFE-7000)	375-03-1	$CH_3OCF_2CF_2CF_3$	575	575
HFE-347mmy1	22052-84-2	$CH_3OCF(CF_3)_2$	343	343
HFE-356mec3	382-34-3	$CH_3OCF_2CHFCF_3$	101	101
HFE-356mm1	13171-18-1	$(CF_3)_2CHOCH_3$	27	27
HFE-356pcc3	160620-20-2	$CH_3OCF_2CF_2CHF_2$	110	110
HFE-365mcf2 (1-Ethoxy-1,1,2,2,2-pentafluoroethane)	22052-81-9	$CF_3CF_2OCH_2CH_3$	NA	58*
HFE-365mcf3	378-16-5	$CF_3CF_2CH_2OCH_3$	11	11
HFE-374pc2	512-51-6	$CH_3CH_2OCF_2CHF_2$	557	557
HFE-449sl (HFE-7100) Chemical blend	163702-07-6 163702-08-7	$C_4F_9OCH_3$ $(CF_3)_2CFCF_2OCH_3$	297	297
HFE-569sf2 (HFE-7200) Chemical blend	163702-05-4 163702-06-5	$C_4F_9OC_2H_5$ $(CF_3)_2CFCF_2OC_2H_5$	59	59
HG'-01 (1,1,2,2-Tetrafluoro-1,2-dimethoxyethane)	73287-23-7	$CH_3OCF_2CF_2OCH_3$	NA	222*
HG'-02 (1,1,2,2-Tetrafluoro-1-methoxy-2-(1,1,2,2-tetrafluoro-2-methoxyethoxy)ethane)	485399-46-0	$CH_3O(CF_2CF_2O)_2CH_3$	NA	236*
HG'-03 (3,3,4,4,6,6,7,7,9,9,10,10-Dodecafluoro-2,5,8,11-tetraoxa-dodecane)	485399-48-2	$CH_3O(CF_2CF_2O)_3CH_3$	NA	221*
Difluoro(methoxy)methane	359-15-9	CH_3OCHF_2	NA	144*
2-Chloro-1,1,2-trifluoro-1-methoxyethane	425-87-6	CH_3OCF_2CHFCl	NA	122*
1-Ethoxy-1,1,2,2,3,3,3-heptafluoropropane	22052-86-4	$CF_3CF_2CF_2OCH_2CH_3$	NA	61*
2-Ethoxy-3,3,4,4,5-pentafluorotetrahydro-2,5-bis [1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-furan	920979-28-8	$C_{12}H_5F_{19}O_2$	NA	56*

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
1-Ethoxy-1,1,2,3,3,3-hexafluoro-propane	380-34-7	$CF_3CHFCF_2OCH_2CH_3$	NA	23*
Fluoro(methoxy)methane	460-22-0	CH_3OCH_2F	NA	13*
1,1,2,2-Tetrafluoro-3-methoxy-propane; Methyl 2,2,3,3-tetrafluo-ropropyl ether	60598-17-6	$CHF_2CF_2CH_2OCH_3$	NA	0.5*
Non-segregated Saturated Hydrofluoroethers (HFEs) and Hydrochlorofluoroethers (HCFEs)				
HFE-125	3822-68-2	CHF_2OCF_3	14,900	14,900
HFE-134 (HG-00)	1691-17-4	CHF_2OCHF_2	6,320	6,320
HFE-227ea	2356-62-9	$CF_3CHFOCF_3$	1,540	1,540
HFE-236ca (1-(Difluoromethoxy)-1,1,2,2-tetrafluoroethane)	32778-11-3	$CHF_2OCF_2CHF_2$	NA	4,240*
HFE-236ca12 (HG-10)	78522-47-1	$CHF_2OCF_2OCHF_2$	2,800	2,800
HFE-236ea2 (Desflurane)	57041-67-5	$CHF_2OCHFCF_3$	989	989
HFE-236fa	20193-67-3	$CF_3CH_2OCF_3$	487	487
HFE-245fa1	84011-15-4	$CHF_2CH_2OCF_3$	286	286
HFE-245fa2	1885-48-9	$CHF_2OCH_2CF_3$	659	659
HFE-329mcc2	134769-21-4	$CF_3CF_2OCF_2CHF_2$	919	919
HFE-329me3 (1,1,1,2,3,3-Hexafluoro-3-(trifluoromethoxy)propane)	428454-68-6	$CF_3CFHCF_2OCF_3$	NA	4,550*
HFE-338mcf2	156053-88-2	$CF_3CF_2OCH_2CF_3$	552	552
HFE-338mmz1	26103-08-2	$CHF_2OCH(CF_3)_2$	380	380
HFE-338pcc13 (HG-01)	188690-78-0	$CHF_2OCF_2CF_2OCHF_2$	1,500	1,500
HFE-347mcf2	171182-95-9	$CF_3CF_2OCH_2CHF_2$	374	374
HFE-347mmz1; Sevoflurane (2-(Difluoromethoxy)-1,1,1,3,3,3-hexafluoropropane)	28523-86-6	$(CF_3)_2CHOCHF_2$	NA	216*
HFE-347pcf2	406-78-0	$CHF_2CF_2OCH_2CF_3$	580	580
HFE-356mff2 (bis(2,2,2-trifluoroethyl) ether)	333-36-8	$CF_3CH_2OCH_2CF_3$	NA	17*
HFE-356pcf2	50807-77-7	$CHF_2CH_2OCF_2CHF_2$	265	265
HFE-356pcf3	35042-99-0	$CHF_2OCH_2CF_2CHF_2$	502	502
HFE-43-10pccc (H-Galden 1040x, HG-11)	E1730133	$CHF_2OCF_2OC_2F_4OCHF_2$	1,870	1,870
HCFE-235ca2 (Enflurane) (2-Chloro-1-(difluoromethoxy)-1,1,2-trifluoroethane)	13838-16-9	CHF_2OCF_2CHFCl	NA	583*
HCFE-235da2 (Isoflurane)	26675-46-7	$CHF_2OCHClCF_3$	350	350

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
HG-02 (1-(Difluoromethoxy)-2-(2-(difluoromethoxy)-1,1,2,2-tetrafluoroethoxy)-1,1,2,2-tetrafluoroethane)	205367-61-9	HF_2C-$(OCF_2CF_2)_2$-OCF_2H	NA	2,730*
HG-03 (1,1,3,3,4,4,6,6,7,7,9,9,10,10,12,12-Hexadecafluoro-2,5,8,11-tetra-oxadodecane)	173350-37-3	HF_2C-$(OCF_2CF_2)_3$-OCF_2H	NA	2,850*
HG-20 ((Difluoromethoxy) ((difluoromethoxy) difluorome-thoxy) difluoromethane)	249932-25-0	HF_2C-$(OCF_2)_2$-OCF_2H	NA	5,300*
HG-21 (1,1,3,3,5,5,7,7,8,8,10,10-Dodecafluoro-2,4,6,9-tetraoxade-cane)	249932-26-1	HF_2C-$OCF_2CF_2OCF_2OCF_2O$-CF_2H	NA	3,890*
HG-30 (1,1,3,3,5,5,7,7,9,9-Deca-fluoro-2,4,6,8-tetraoxanonane)	188690-77-9	HF_2C-$(OCF_2)_3$-OCF_2H	NA	7,330*
1,1,1,2,2,3,3-Heptafluoro-3-(1,2,2,2-tetrafluoroethoxy)-pro-pane	3330-15-2	$CF_3CF_2CF_2OCHFCF_3$	NA	6,490*
1,1'-Oxybis[2-(difluoromethoxy)-1,1,2,2-tetrafluoroethane	205367-61-9	$HCF_2O(CF_2CF_2O)_2CF_2H$	NA	4,920*
1,1,3,3,4,4,6,6,7,7,9,9,10,10,12,12-hexadecafluoro-2,5,8,11-Tetra-oxadodecane	173350-37-3	$HCF_2O(CF_2CF_2O)_3CF_2H$	NA	4,490*
1,1,3,3,4,4,6,6,7,7,9,9,10,10,12,12,13,13,15,15-eicosafluoro-2,5,8,11,14-Pentaoxapentadecane	173350-38-4	$HCF_2O(CF_2CF_2O)_4CF_2H$	NA	3,630*
1,1,2-Trifluoro-2-(trifluoromethoxy)-ethane	84011-06-3	$CHF_2CHFOCF_3$	NA	1,240*
1,1,2,2-Tetrafluoro-1-(fluoromethoxy) ethane	37031-31-5	$CH_2FOCF_2CF_2H$	NA	871*
Trifluoro (fluoromethoxy) meth-ane	2261-01-0	CH_2FOCF_3	NA	751*
Difluoro (fluoromethoxy) meth-ane	461-63-2	CH_2FOCHF_2	NA	617*
Fluoro (fluoromethoxy) methane	462-51-1	CH_2FOCH_2F	NA	130*
Unsaturated Perfluorocarbons (PFCs)				
PFC-1114; TFE (tetrafluoroeth-ylene (TFE); Perfluoroethene)	116-14-3	$CF_2=CF_2$; C_2F_4	0.04	0.04
PFC-1216; Dyneon HFP (hexa-fluoropropylene (HFP); Perfluo-ropropene)	116-15-4	C_3F_6; $CF_3CF=CF_2$	0.05	0.05
PFC C-1418 (Perfluorocyclopen-tene; Octafluorocyclopentene)	559-40-0	c-C_5F_8	1.97	1.97
Perfluorobut-2-ene	360-89-4	$CF_3CF=CFCF_3$	1.82	1.82

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
Perfluorobut-1-ene	357-26-6	$CF_3CF_2CF=CF_2$	0.10	0.10
Perfluorobuta-1,3-diene	685-63-2	$CF_2=CFCF=CF_2$	0	0.03
Unsaturated Hydrofluorocarbons (HFCs) and Hydrochlorofluorocarbons (HCFCs)				
HFC-1132a; VF2 (vinylidiene fluoride)	75-38-7	$C_2H_2F_2$, $CF_2=CH_2$	0.04	0.04
HFC-1141; VF (vinyl fluoride)	75-02-5	C_2H_3F, $CH_2=CHF$	0.02	0.02
(E)-HFC-1225ye ((E)-1,2,3,3,3-Pentafluoroprop-1-ene)	5595-10-8	$CF_3CF=CHF(E)$	0.06	0.06
(Z)-HFC-1225ye ((Z)-1,2,3,3,3-Pentafluoroprop-1-ene)	5528-43-8	$CF_3CF=CHF(Z)$	0.22	0.22
Solstice 1233zd(E) (trans-1-chloro-3,3,3-trifluoroprop-1-ene)	102687-65-0	$C_3H_2ClF_3$; $CHCl=CHCF_3$	NA	1.34*
HFC-1234yf; HFO-1234yf (2,3,3,3-Tetrafluoroprop-1-ene)	754-12-1	$C_3H_2F_4$; $CF_3CF=CH_2$	0.31	0.31
HFC-1234ze(E) ((E)-1,3,3,3-Tetrafluoroprop-1-ene)	1645-83-6	$C_3H_2F_4$; cis-$CF_3CH=CHF$	0.97	0.97
HFC-1234ze(Z) ((Z)-1,3,3,3-Tetrafluoroprop-1-ene)	29118-25-0	$C_3H_2F_4$; trans-$CF_3CH=CHF$; $CF_3CH=CHF(Z)$	0.29	0.29
HFC-1243zf; TFP (trifluoro propene (TFP); 3,3,3-Trifluoroprop-1-ene)	677-21-4	$C_3H_3F_3$,$CF_3CH=CH_2$	0.12	0.12
(Z)-HFC-1336 ((Z)-1,1,1,4,4,4-Hexafluorobut-2-ene)	692-49-9	$CF_3CH=CHCF_3(Z)$	1.58	1.58
HFO-1345zfc (3,3,4,4,4-Pentafluorobut-1-ene)	374-27-6	$C_2F_5CH=CH_2$	0.09	0.09
Capstone 42-U (perfluorobutyl ethene (42-U); 3,3,4,4,5,5,6,6,6-Nonafluorohex-1-ene)	19430-93-4	$C_6H_3F_9$,$CF_3(CF_2)_3CH=CH_2$	0.16	0.16
Capstone 62-U (perfluorohexyl ethene (62-U); 3,3,4,4,5,5,6,6,7,7,8,8,8-Tridecafluorooct-1-ene)	25291-17-2	$C_8H_3F_{13}$,$CF_3(CF_2)_5CH=CH_2$	0.11	0.11
Capstone 82-U (perfluorooctyl ethene (82-U); 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-Heptadecafluorodec-1-ene)	21652-58-4	$C_{10}H_3F_{17}$,$CF_3(CF_2)_7CH=CH_2$	0.09	0.09
Unsaturated Halogenated Ethers				
PMVE; HFE-216 (perfluoromethyl vinyl ether (PMVE))	1187-93-5	$CF_3OCF=CF_2$	NA	0.17*
Fluoroxene ((2,2,2-Trifluoroethoxy) ethene)	406-90-6	$CF_3CH_2OCH=CH_2$	NA	0.05*
Fluorinated Aldehydes				
3,3,3-Trifluoro-propanal	460-40-2	CF_3CH_2CHO	NA	0.01*

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
Fluorinated Ketones				
Novec 1230 (FK-5-1-12 Perfluoroketone; FK-5-1-12myy2; perfluoro (2-methyl-3-pentanone))	756-13-8	$CF_3CF_2C(O)CF(CF_3)_2$	NA	0.1*
Fluorotelomer Alcohols				
3,3,4,4,5,5,6,6,7,7,7-Undecafluoroheptan-1-ol	185689-57-0	$CF_3(CF_2)_4CH_2CH_2OH$	NA	0.43*
3,3,3-Trifluoropropan-1-ol	2240-88-2	$CF_3CH_2CH_2OH$	NA	0.35*
3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-Pentadecafluorononan-1-ol	755-02-2	$CF_3(CF_2)_6CH_2CH_2OH$	NA	0.33*
3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,11-Nonadecafluoroundecan-1-ol	87017-97-8	$CF_3(CF_2)_8CH_2CH_2OH$	NA	0.19*
Fluorinated GHGs with Carbon-Iodine Bond(s)				
Trifluoroiodomethane	2314-97-8	CF_3I	NA	0.4*
Other Fluorinated Compounds				
Trifluoromethyl formate	85358-65-2	$HCOOCF_3$	NA	588*
Perfluoroethyl formate	313064-40-3	$HCOOCF_2CF_3$	NA	580*
1,2,2,2-Tetrafluoroethyl formate	481631-19-0	$HCOOCHFCF_3$	NA	470*
Perfluorobutyl formate	197218-56-7	$HCOOCF_2CF_2CF_2CF_3$	NA	392*
Perfluoropropyl formate	271257-42-2	$HCOOCF_2CF_2CF_3$	NA	376*
1,1,1,3,3,3-Hexafluoropropan-2-yl formate	856766-70-6	$HCOOCH(CF_3)_2$	NA	333*
Dibromodifluoromethane (Halon 1202)	75-61-6	CBr_2F_2	NA	231*
Bis(trifluoromethyl)-methanol	920-66-1	$(CF_3)_2CHOH$	195	195
1,1,1,3,3,3-Hexafluoropropan-2-ol	920-66-1	$(CF_3)_2CHOH$	NA	182*
Methyl carbonofluoridate	1538-06-3	$FCOOCH_3$	NA	95*
(Octafluorotetramethy-lene) hydroxymethyl group	NA	$X\text{-}(CF_2)_4CH(OH)\text{-}X$	73	73
Methyl 2,2,2-trifluoroacetate	431-47-0	CF_3COOCH_3	NA	52*
2,2,3,3,3-pentafluoropropanol	422-05-9	$CF_3CF_2CH_2OH$	42	42
2-Bromo-2-chloro-1,1,1-trifluoroethane (Halon-2311/Halothane)	151-67-7	$CHBrClCF_3$	NA	41*
2,2,3,3,4,4,4-Heptafluorobutan-1-ol	375-01-9	$C_3F_7CH_2OH$	NA	34*
2,2,2-Trifluoroethyl formate	32042-38-9	$HCOOCH_2CF_3$	NA	33*
1,1-Difluoroethyl 2,2,2-trifluoroacetate	1344118-13-3	$CF_3COOCF_2CH_3$	NA	31*
Difluoromethyl 2,2,2-trifluoroacetate	2024-86-4	$CF_3COOCHF_2$	NA	27*

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
1,1-Difluoroethyl carbonofluoridate	1344118-11-1	$FCOOCF_2CH_3$	NA	27*
2,2,2-Trifluoroethanol	75-89-8	CF_3CH_2OH	NA	20*
2,2,3,3,3-Pentafluoropropan-1-ol	422-05-9	$CF_3CF_2CH_2OH$	NA	19*
2,2,3,4,4,4-Hexafluoro-1-butanol	382-31-0	$CF_3CHFCF_2CH_2OH$	NA	17*
3,3,3-Trifluoropropyl formate	1344118-09-7	$HCOOCH_2CH_2CF_3$	NA	17*
2,2,3,3,4,4,4-Heptafluoro-1-butanol	375-01-9	$CF_3CF_2CF_2CH_2OH$	NA	16*
2,2,3,3-Tetrafluoro-1-propanol	76-37-9	$CHF_2CF_2CH_2OH$	NA	13*
2,2,2-Trifluoroethyl 2,2,2-trifluoroacetate	407-38-5	$CF_3COOCH_2CF_3$	NA	7*
Methyl 2,2-difluoroacetate	433-53-4	HCF_2COOCH_3	NA	3*
2,2-Difluoroethanol	359-13-7	CHF_2CH_2OH	NA	3*
Perfluoroethyl acetate	343269-97-6	$CH_3COOCF_2CF_3$	NA	2.1*
Trifluoromethyl acetate	74123-20-9	CH_3COOCF_3	NA	2.0*
Perfluoropropyl acetate	1344118-10-0	$CH_3COOCF_2CF_2CF_3$	NA	1.8*
Perfluorobutyl acetate	209597-28-4	$CH_3COOCF_2CF_2CF_2CF_3$	NA	1.6*
Ethyl 2,2,2-trifluoroacetate	383-63-1	$CF_3COOCH_2CH_3$	NA	1.3*
2-Fluoroethanol	371-62-0	CH_2FCH_2OH	NA	1.1*
4,4,4-Trifluorobutan-1-ol	461-18-7	$CF_3(CH_2)_2CH_2OH$	NA	0.05*
Default GWPs for which Chemical-Specific GWPs are not Listed Above				
Fully fluorinated GHGs			NA	10,000*
Saturated PFCs			10,000	10,000
Saturated HFCs			2,200	2,200
Partially segregated saturated HFEs and HCFEs			NA	200*
Non-segregated saturated HFEs and HCFEs			NA	2,400*
Unsaturated PFCs and unsaturated HFCs			1	1
Unsaturated HCFCs, unsaturated halogenated ethers, unsaturated halogenated esters, fluorinated aldehydes, and fluorinated ketones			NA	1*
Fluorotelomer alcohols			NA	1*
Fluorinated GHGs with carbon-iodine bond(s)			NA	1*
Other fluorinated GHGs			NA	110

NA = not available.

[1] = **Determining applicability for emissions years 2013 and 2014.** For emissions year 2013 (reported in 2014) and emissions year 2014 (reported in 2015), facilities may use the GWPs in either column when calculating GHG emissions for comparison to the reporting threshold under WAC 173-441-030(1).

[2] = **Calculating annual GHG emissions for emissions year 2013.** For emissions year 2013 (reported in 2014), facilities may use the GWPs in either column when calculating GHG emissions for the annual GHG report.

[3] = **Determining applicability for emissions year 2015+.** For emissions year 2015 (reported in 2016) and subsequent years, facilities must use the GWPs in this column when calculating GHG emissions for comparison to the reporting threshold under WAC 173-441-030(1).

[4] = **Calculating annual GHG emissions for emissions year 2014+.** For emissions year 2014 (reported in 2015) and subsequent years, facilities must use the GWPs in this column when calculating GHG emissions for the annual GHG report.

* = Requirements to include emissions of this compound when calculating GHG emissions for comparison to the reporting threshold under WAC 173-441-030(1) and when calculating GHG emissions for the annual GHG report become effective beginning with emissions year 2016 (reported in 2017).

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-050 General monitoring, reporting, recordkeeping and verification requirements. Persons subject to the requirements of this chapter must submit GHG reports to ecology, as specified in this section.

(1) **General.** Follow the procedures for emission calculation, monitoring, quality assurance, missing data, recordkeeping, and reporting that are specified in each relevant section of this chapter.

(2) **Schedule.** The annual GHG report must be submitted as follows:

(a) Report submission due date:

(i) A person required to report GHG emissions to the United States Environmental Protection Agency under 40 C.F.R. Part 98 must submit the report required under this chapter to ecology no later than March 31st of each calendar year for GHG emissions in the previous calendar year.

(ii) A person not required to report GHG emissions to the United States Environmental Protection Agency under 40 C.F.R. Part 98 must submit the report required under this chapter to ecology no later than October 31st of each calendar year for GHG emissions in the previous calendar year.

(iii) Unless otherwise stated, if the final day of any time period falls on a weekend or a state holiday, the time period shall be extended to the next business day.

(b) Reporting requirements begin:

(i) For an existing facility or supplier that began operation before January 1, 2012, report emissions for calendar year 2012 and each subsequent calendar year.

(ii) For a new facility or supplier that begins operation on or after January 1, 2012, and becomes subject to the rule in the year that it becomes operational, report emissions beginning with the first operating month and ending on December 31st of that year. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

(iii) For any facility or supplier that becomes subject to this rule because of a physical or operational change that is made after January 1, 2012, report emissions for the first calendar year in which the change occurs.

(A) Facilities begin reporting with the first month of the change and ending on December 31st of that year. For a facility that becomes subject to this rule solely because of an increase in hours of operation or level of production, the first month of the change is the month in which the increased hours of operation or level of production, if maintained for the remainder of the year, would cause the facility or supplier to exceed the applicable threshold.

(B) Suppliers begin reporting January 1st and ending on December 31st the year of the change.

(C) For both facilities and suppliers, each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

(3) **Content of the annual report.** Each annual GHG report ((~~shall~~)) must contain the following information:

(a) Facility name or supplier name (as appropriate), facility or supplier ID number, and physical street address of the facility or supplier, including the city, state, and zip code. If the facility does not have a physical street address, then the facility must provide the latitude and longitude representing the geographic centroid or center point of facility operations in decimal degree format. This must be provided in a comma-delimited "latitude, longitude" coordinate pair reported in decimal degrees to at least four digits to the right of the decimal point.

(b) Year and months covered by the report.

(c) Date of submittal.

(d) For facilities, report annual emissions of each GHG (as defined in WAC 173-441-020) and each fluorinated heat transfer fluid, as follows:

(i) Annual emissions (including biogenic CO_2) aggregated for all GHGs from all applicable source categories in WAC 173-441-120 and expressed in metric tons of CO_2e calculated using Equation A-1 of WAC 173-441-030 (1)(b)(iii).

(ii) Annual emissions of biogenic CO_2 aggregated for all applicable source categories in WAC 173-441-120, expressed in metric tons.

(iii) Annual emissions from each applicable source category in WAC 173-441-120, expressed in metric tons of each applicable GHG listed in subsections (3)(d)(iii)(A) through ((~~(E)~~)) (F) of this section.

(A) Biogenic CO_2.

(B) CO_2 (including biogenic CO_2).

(C) CH_4.

(D) N_2O.

(E) Each fluorinated GHG.

(F) For electronics manufacturing each fluorinated heat transfer fluid that is not also a fluorinated GHG as specified under WAC 173-441-040.

(iv) Emissions and other data for individual units, processes, activities, and operations as specified in the "data reporting requirements" section of each applicable source category referenced in WAC 173-441-120.

(v) Indicate (yes or no) whether reported emissions include emissions from a cogeneration unit located at the facility.

(vi) When applying subsection (3)(d)(i) of this section to fluorinated GHGs and fluorinated heat transfer fluids, calculate and report CO_2e for only those fluorinated GHGs and fluorinated heat transfer fluids listed in WAC 173-441-040.

(vii) For reporting year 2014 and thereafter, you must enter into verification software specified by the director the data specified in the verification software records provision in each applicable recordkeeping section. For each data element entered into the verification software, if the software produces a warning message for the data value and you elect

not to revise the data value, you may provide an explanation in the verification software of why the data value is not being revised. Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

(e) For suppliers, report the following information:

(i) Annual emissions of CO_2, expressed in metric tons of CO_2, as required in subsections (3)(e)(i)(A) and (B) of this section that would be emitted from the complete combustion or oxidation of the fuels reported to DOL as sold in Washington state during the calendar year.

(A) Aggregate biogenic CO_2.

(B) Aggregate CO_2 (including nonbiogenic and biogenic CO_2).

(ii) All contact information reported to DOL not included in (a) of this subsection.

(f) A written explanation, as required under subsection (4) of this section, if you change emission calculation methodologies during the reporting period.

(g) Each data element for which a missing data procedure was used according to the procedures of an applicable subpart referenced in WAC 173-441-120 and the total number of hours in the year that a missing data procedure was used for each data element.

(h) A signed and dated certification statement provided by the designated representative of the owner or operator, according to the requirements of WAC 173-441-060 (5)(a).

(i) NAICS code(s) that apply to the ((~~reporting entity~~)) facility or supplier.

(i) Primary NAICS code. Report the NAICS code that most accurately describes the ((~~reporting entity's~~)) facility or supplier's primary product/activity/service. The primary product/activity/service is the principal source of revenue for the ((~~reporting entity. A reporting entity~~)) facility or supplier. A facility or supplier that has two distinct products/activities/services providing comparable revenue may report a second primary NAICS code.

(ii) Additional NAICS code(s). Report all additional NAICS codes that describe all product(s)/activity(s)/service(s) at the ((~~reporting entity~~)) facility or supplier that are not related to the principal source of revenue. ((~~If more than one additional NAICS code applies, list the additional NAICS codes in the order of the largest revenue to the smallest.~~))

(j) Legal name(s) and physical address(es) of the highest-level United States parent company(s) of the ((~~reporting entity~~)) owners (or operators) of the facility or supplier and the percentage of ownership interest for each listed parent company as of December 31st of the year for which data are being reported according to the following instructions:

(i) If the ((~~reporting entity~~)) facility or supplier is entirely owned by a single United States company that is not owned by another company, provide that company's legal name and physical address as the United States parent company and report one hundred percent ownership.

(ii) If the ((~~reporting entity~~)) facility or supplier is entirely owned by a single United States company that is, itself, owned by another company (e.g., it is a division or subsidiary of a higher-level company), provide the legal name and physical address of the highest-level company in the ownership hierarchy as the United States parent company and report one hundred percent ownership.

(iii) If the ((~~reporting entity~~)) facility or supplier is owned by more than one United States company (e.g., company A owns forty percent, company B owns thirty-five percent, and company C owns twenty-five percent), provide the legal names and physical addresses of all the highest-level companies with an ownership interest as the United States parent companies and report the percent ownership of each company.

(iv) If the ((~~reporting entity~~)) facility or supplier is owned by a joint venture or a cooperative, the joint venture or cooperative is its own United States parent company. Provide the legal name and physical address of the joint venture or cooperative as the United States parent company, and report one hundred percent ownership by the joint venture or cooperative.

(v) If the ((~~reporting entity~~)) facility or supplier is entirely owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States as the United States parent company, and report one hundred percent ownership.

(vi) If the ((~~reporting entity~~)) facility or supplier is partially owned by a foreign company and partially owned by one or more United States companies, provide the legal name and physical address of the foreign company's highest-level company based in the United States, along with the legal names and physical addresses of the other United States parent companies, and report the percent ownership of each of these companies.

(vii) If the ((~~reporting entity~~)) facility or supplier is a federally owned facility, report "U.S. Government" and do not report physical address or percent ownership.

(k) An indication of whether the facility includes one or more plant sites that have been assigned a "plant code" by either the Department of Energy's Energy Information Administration or by the Environmental Protection Agency's (EPA) Clean Air Markets Division.

(4) **Emission calculations.** In preparing the GHG report, you must use the calculation methodologies specified in the relevant sections of this chapter. For each source category, you must use the same calculation methodology throughout a reporting period unless you provide a written explanation of why a change in methodology was required.

(5) **Verification.** To verify the completeness and accuracy of reported GHG emissions, ecology may review the certification statements described in subsection (3)(h) of this section and any other credible evidence, in conjunction with a comprehensive review of the GHG reports and periodic audits of selected reporting facilities. Nothing in this section prohibits ecology from using additional information to verify the completeness and accuracy of the reports.

(6) **Recordkeeping.** A person that is required to report((~~s~~)) GHGs under this chapter must keep records as specified in this subsection. Retain all required records for at least three years((~~. The records shall be kept in an electronic or hard copy format (as appropriate) and recorded in a form that is suitable for expeditious inspection and review~~)) from

the date of submission of the annual GHG report for the reporting year in which the record was generated. Upon request by ecology, the records required under this section must be made available to ecology. Records may be retained off-site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, the equipment or software necessary to read the records ((~~shall~~)) must be made available, or, if requested by ecology, electronic records ((~~shall~~)) must be converted to paper documents. You must retain the following records, in addition to those records prescribed in each applicable section of this chapter:

(a) A list of all units, operations, processes, and activities for which GHG emissions were calculated.

(b) The data used to calculate the GHG emissions for each unit, operation, process, and activity, categorized by fuel or material type. These data include, but are not limited to, the following information:

(i) The GHG emissions calculations and methods used.

(ii) Analytical results for the development of site-specific emissions factors.

(iii) The results of all required analyses for high heat value, carbon content, and other required fuel or feedstock parameters.

(iv) Any facility operating data or process information used for the GHG emission calculations.

(c) The annual GHG reports.

(d) Missing data computations. For each missing data event, also retain a record of the cause of the event and the corrective actions taken to restore malfunctioning monitoring equipment.

(e) Owners or operators required to report under WAC 173-441-030(1) must keep a written GHG monitoring plan (monitoring plan, plan).

(i) At a minimum, the GHG monitoring plan ((~~shall~~)) must include the following elements:

(A) Identification of positions of responsibility (i.e., job titles) for collection of the emissions data.

(B) Explanation of the processes and methods used to collect the necessary data for the GHG calculations.

(C) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(ii) The GHG monitoring plan may rely on references to existing corporate documents (e.g., standard operating procedures, quality assurance programs under appendix F to 40 C.F.R. Part 60 or appendix B to 40 C.F.R. Part 75, and other documents) provided that the elements required by (e)(i) of this subsection are easily recognizable.

(iii) The owner or operator ((~~shall~~)) must revise the GHG monitoring plan as needed to reflect changes in production processes, monitoring instrumentation, and quality assurance procedures; or to improve procedures for the maintenance and repair of monitoring systems to reduce the frequency of monitoring equipment downtime.

(iv) Upon request by ecology, the owner or operator ((~~shall~~)) must make all information that is collected in conformance with the GHG monitoring plan available for review during an audit. Electronic storage of the information in the plan is permissible, provided that the information can be made available in hard copy upon request during an audit.

(f) The results of all required certification and quality assurance tests of continuous monitoring systems, fuel flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(g) Maintenance records for all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(h) Suppliers must retain any other data specified in WAC 173-441-130(5).

(7) **Annual GHG report revisions.**

(a) A person ((~~shall~~)) must submit a revised annual GHG report within forty-five days of discovering that an annual GHG report that the person previously submitted contains one or more substantive errors. The revised report must correct all substantive errors.

(b) Ecology may notify the person in writing that an annual GHG report previously submitted by the person contains one or more substantive errors. Such notification will identify each such substantive error. The person ((~~shall~~)) must, within forty-five days of receipt of the notification, either resubmit the report that, for each identified substantive error, corrects the identified substantive error (in accordance with the applicable requirements of this chapter) or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error.

(c) A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

(d) Notwithstanding (a) and (b) of this subsection, upon request by a person, ecology may provide reasonable extensions of the forty-five day period for submission of the revised report or information under (a) and (b) of this subsection. If ecology receives a request for extension of the forty-five day period, by e-mail to ((~~an address prescribed by ecology~~)) ghgreporting@ecy.wa.gov, at least two business days prior to the expiration of the forty-five day period, and ecology does not respond to the request by the end of such period, the extension request is deemed to be automatically granted for thirty more days. During the automatic thirty-day extension, ecology will determine what extension, if any, beyond the automatic extension is reasonable and will provide any such additional extension.

(e) The owner or operator ((~~shall~~)) must retain documentation for three years to support any revision made to an annual GHG report.

(8) **Calibration and accuracy requirements.** The owner or operator of a facility that is subject to the requirements of this chapter must meet the applicable flow meter calibration and accuracy requirements of this subsection. The accuracy specifications in this subsection do not apply where either the use of company records (as defined in WAC 173-441-020(3)) or the use of "best available information" is specified in an applicable subsection of this chapter to quantify fuel usage and/or other parameters. Further, the provisions of this subsection do not apply to stationary fuel combustion units that use the methodologies in 40 C.F.R. Part 75

to calculate CO_2 mass emissions. Suppliers subject to the requirements of this chapter must meet the calibration accuracy requirements in chapters 308-72, 308-77, and 308-78 WAC.

(a) Except as otherwise provided in (d) through (f) of this subsection, flow meters that measure liquid and gaseous fuel feed rates, process stream flow rates, or feedstock flow rates and provide data for the GHG emissions calculations, ((~~shall~~)) must be calibrated prior to January 1, 2012, using the procedures specified in this subsection when such calibration is specified in a relevant section of this chapter. Each of these flow meters ((~~shall~~)) must meet the applicable accuracy specification in (b) or (c) of this subsection. All other measurement devices (e.g., weighing devices) that are required by a relevant subsection of this chapter, and that are used to provide data for the GHG emissions calculations, ((~~shall~~)) must also be calibrated prior to January 1, 2012; however, the accuracy specifications in (b) and (c) of this subsection do not apply to these devices. Rather, each of these measurement devices ((~~shall~~)) must be calibrated to meet the accuracy requirement specified for the device in the applicable subsection of this chapter, or, in the absence of such accuracy requirement, the device must be calibrated to an accuracy within the appropriate error range for the specific measurement technology, based on an applicable operating standard including, but not limited to, manufacturer's specifications and industry standards ((~~and manufacturer's specifications~~)). The procedures and methods used to quality-assure the data from each measurement device ((~~shall~~)) must be documented in the written monitoring plan, pursuant to subsection (6)(e)(i)(C) of this section.

(i) All flow meters and other measurement devices that are subject to the provisions of this subsection must be calibrated according to one of the following: You may use the manufacturer's recommended procedures; an appropriate industry consensus standard method; or a method specified in a relevant section of this chapter. The calibration method(s) used ((~~shall~~)) must be documented in the monitoring plan required under subsection (6)(e) of this section.

(ii) For facilities and suppliers that become subject to this chapter after January 1, 2012, all flow meters and other measurement devices (if any) that are required by the relevant subsection(s) of this chapter to provide data for the GHG emissions calculations ((~~shall~~)) must be installed no later than the date on which data collection is required to begin using the measurement device, and the initial calibration(s) required by this subsection (if any) ((~~shall~~)) must be performed no later than that date.

(iii) Except as otherwise provided in (d) through (f) of this subsection, subsequent recalibrations of the flow meters and other measurement devices subject to the requirements of this subsection ((~~shall~~)) must be performed at one of the following frequencies:

(A) You may use the frequency specified in each applicable subsection of this chapter.

(B) You may use the frequency recommended by the manufacturer or by an industry consensus standard practice, if no recalibration frequency is specified in an applicable subsection.

(b) Perform all flow meter calibration at measurement points that are representative of the normal operating range of the meter. Except for the orifice, nozzle, and venturi flow meters described in (c) of this subsection, calculate the calibration error at each measurement point using Equation A–2 of this subsection. The terms "R" and "A" in Equation A–2 must be expressed in consistent units of measure (e.g., gallons/minute, ft^3/min). The calibration error at each measurement point ((~~shall~~)) must not exceed 5.0 percent of the reference value.

$$CE = \frac{|R-A|}{R} \times 100 \qquad \text{(Eq. A-2)}$$

Where:

CE	=	Calibration error	(%)
R	=	Reference value	
A	=	Flow meter response to the reference value	

(c) For orifice, nozzle, and venturi flow meters, the initial quality assurance consists of in situ calibration of the differential pressure (delta-P), total pressure, and temperature transmitters.

(i) Calibrate each transmitter at a zero point and at least one upscale point. Fixed reference points, such as the freezing point of water, may be used for temperature transmitter calibrations. Calculate the calibration error of each transmitter at each measurement point, using Equation A–3 of this subsection. The terms "R," "A," and "FS" in Equation A–3 of this subsection must be in consistent units of measure (e.g., milliamperes, inches of water, psi, degrees). For each transmitter, the CE value at each measurement point ((~~shall~~)) must not exceed 2.0 percent of full-scale. Alternatively, the results are acceptable if the sum of the calculated CE values for the three transmitters at each calibration level (i.e., at the zero level and at each upscale level) does not exceed 6.0 percent.

$$CE = \frac{|R-A|}{FS} \times 100 \qquad \text{(Eq. A-3)}$$

Where:

CE	=	Calibration error	(%)
R	=	Reference value	
A	=	Transmitter response to the reference value	
FS	=	Full-scale value of the transmitter	

(ii) In cases where there are only two transmitters (i.e., differential pressure and either temperature or total pressure) in the immediate vicinity of the flow meter's primary element (e.g., the orifice plate), or when there is only a differential pressure transmitter in close proximity to the primary element, calibration of these existing transmitters to a CE of 2.0 percent or less at each measurement point is still required, in accordance with (c)(i) of this subsection; alternatively, when two transmitters are calibrated, the results are acceptable if the sum of the CE values for the two transmitters at each calibration level does not exceed 4.0 percent. However, note that installation and calibration of an additional transmitter (or

transmitters) at the flow monitor location to measure temperature or total pressure or both is not required in these cases. Instead, you may use assumed values for temperature and/or total pressure, based on measurements of these parameters at a remote location (or locations), provided that the following conditions are met:

(A) You must demonstrate that measurements at the remote location(s) can, when appropriate correction factors are applied, reliably and accurately represent the actual temperature or total pressure at the flow meter under all expected ambient conditions.

(B) You must make all temperature and/or total pressure measurements in the demonstration described in (c)(ii)(A) of this subsection with calibrated gauges, sensors, transmitters, or other appropriate measurement devices. At a minimum, calibrate each of these devices to an accuracy within the appropriate error range for the specific measurement technology, according to one of the following: You may calibrate using a manufacturer's specification or an industry consensus standard((~~s or a manufacturer's specification~~)).

(C) You must document the methods used for the demonstration described in (c)(ii)(A) of this subsection in the written GHG monitoring plan under subsection (6)(e)(i)(C) of this section. You must also include the data from the demonstration, the mathematical correlation(s) between the remote readings and actual flow meter conditions derived from the data, and any supporting engineering calculations in the GHG monitoring plan. You must maintain all of this information in a format suitable for auditing and inspection.

(D) You must use the mathematical correlation(s) derived from the demonstration described in (c)(ii)(A) of this subsection to convert the remote temperature or the total pressure readings, or both, to the actual temperature or total pressure at the flow meter, or both, on a daily basis. You ((~~shall~~)) must then use the actual temperature and total pressure values to correct the measured flow rates to standard conditions.

(E) You ((~~shall~~)) must periodically check the correlation(s) between the remote and actual readings (at least once a year), and make any necessary adjustments to the mathematical relationship(s).

(d) Fuel billing meters are exempted from the calibration requirements of this section and from the GHG monitoring plan and recordkeeping provisions of subsections (6)(e)(i)(C) and (g) of this section, provided that the fuel supplier and any unit combusting the fuel do not have any common owners and are not owned by subsidiaries or affiliates of the same company. Meters used exclusively to measure the flow rates of fuels that are used for unit startup ((~~or ignition~~)) are also exempted from the calibration requirements of this section.

(e) For a flow meter that has been previously calibrated in accordance with (a) of this subsection, an additional calibration is not required by the date specified in (a) of this subsection if, as of that date, the previous calibration is still active (i.e., the device is not yet due for recalibration because the time interval between successive calibrations has not elapsed). In this case, the deadline for the successive calibrations of the flow meter ((~~shall~~)) must be set according to one of the following: You may use either the manufacturer's recommended calibration schedule or you may use the industry consensus calibration schedule.

(f) For units and processes that operate continuously with infrequent outages, it may not be possible to meet the deadline established in (a) of this subsection for the initial calibration of a flow meter or other measurement device without disrupting normal process operation. In such cases, the owner or operator may postpone the initial calibration until the next scheduled maintenance outage. The best available information from company records may be used in the interim. The subsequent required recalibrations of the flow meters may be similarly postponed. Such postponements ((~~shall~~)) must be documented in the monitoring plan that is required under subsection (6)(e) of this section.

(g) If the results of an initial calibration or a recalibration fail to meet the required accuracy specification, data from the flow meter ((~~shall~~)) must be considered invalid, beginning with the hour of the failed calibration and continuing until a successful calibration is completed. You ((~~shall~~)) must follow the missing data provisions provided in the relevant missing data sections during the period of data invalidation.

(9) **Measurement device installation.** 40 C.F.R. § 98.3(j) and 40 C.F.R. § 98.3(d) as adopted ((~~or proposed by December 1, 2010~~)) by October 1, 2014, are adopted by reference as modified in WAC 173-441-120(2).

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-060 Authorization and responsibilities of the designated representative. (1) **General.** Except as provided under subsection (6) of this section, each facility, and each supplier, that is subject to this chapter, ((~~shall~~)) must have one and only one designated representative, who ((~~shall~~)) must be responsible for certifying, signing, and submitting GHG emissions reports and any other submissions for such facility and supplier respectively to ecology under this chapter. If the facility is required to submit ((~~an~~)) a GHG emissions report to EPA under 40 C.F.R. Part 98, ((~~the designated representative responsible for certifying, signing, and submitting the GHG emissions reports and all such other emissions reports to EPA shall~~)) that designated representative must also be the designated representative responsible for certifying, signing, and submitting GHG emissions reports to ecology under this chapter.

(2) **Authorization of a designated representative.** The designated representative of the facility or supplier ((~~shall~~)) must be an individual selected by an agreement binding on the owners and operators of such facility or supplier and ((~~shall~~)) must act in accordance with the certification statement in subsection (9)(d)(((~~iv~~))) of this section.

(3) **Responsibility of the designated representative.** Upon receipt by ecology of a complete certificate of representation under this section for a facility or supplier, the designated representative identified in such certificate of representation ((~~shall~~)) must represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of such facility or supplier in all matters pertaining to this chapter, notwithstanding any agreement between the designated representative and such owners and

operators. The owners and operators ((~~shall~~)) must be bound by any decision or order issued to the designated representative by ecology, pollution control hearings board, or a court.

(4) **Timing.** No GHG emissions report or other submissions under this chapter for a facility or supplier will be accepted until ecology has received a complete certificate of representation under this section for a designated representative of the facility or supplier. Such certificate of representation ((~~shall~~)) must be submitted at least sixty days before the deadline for submission of the facility's or supplier's initial emission report under this chapter.

(5) **Certification of the GHG emissions report.** Each GHG emission report and any other submission under this chapter for a facility or supplier ((~~shall~~)) must be certified, signed, and submitted by the designated representative or any alternate designated representative of the facility or supplier in accordance with this section and 40 C.F.R. § 3.10 as adopted on October 13, 2005.

(a) Each such submission ((~~shall~~)) must include the following certification statement signed by the designated representative or any alternate designated representative: "I am authorized to make this submission on behalf of the owners and operators of the facility or supplier, as applicable, for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(b) Ecology will accept a GHG emission report or other submission for a facility or supplier under this chapter only if the submission is certified, signed, and submitted in accordance with this section.

(6) **Alternate designated representative.** A certificate of representation under this section for a facility or supplier may designate one alternate designated representative, who ((~~shall~~)) must be an individual selected by an agreement binding on the owners and operators, and may act on behalf of the designated representative, of such facility or supplier. The agreement by which the alternate designated representative is selected ((~~shall~~)) must include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(a) Upon receipt by ecology of a complete certificate of representation under this section for a facility or supplier identifying an alternate designated representative:

(i) The alternate designated representative may act on behalf of the designated representative for such facility or supplier.

(ii) Any representation, action, inaction, or submission by the alternate designated representative ((~~shall~~)) must be deemed to be a representation, action, inaction, or submission by the designated representative.

(b) Except in this section, whenever the term "designated representative" is used in this chapter, the term ((~~shall~~)) must be construed to include the designated representative or any alternate designated representative.

(7) **Changing a designated representative or alternate designated representative.** The designated representative or alternate designated representative identified in a complete certificate of representation under this section for a facility or supplier received by ecology may be changed at any time upon receipt by ecology of another later signed, complete certificate of representation under this section for the facility or supplier. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative or the previous alternate designated representative of the facility or supplier before the time and date when ecology receives such later signed certificate of representation ((~~shall~~)) must be binding on the new designated representative and the owners and operators of the facility or supplier.

(8) **Changes in owners and operators.** In the event an owner or operator of the facility or supplier is not included in the list of owners and operators in the certificate of representation under this section for the facility or supplier, such owner or operator ((~~shall~~)) must be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the facility or supplier, as if the owner or operator were included in such list. Within ninety days after any change in the owners and operators of the facility or supplier (including the addition of a new owner or operator), the designated representative or any alternate designated representative ((~~shall~~)) must submit a certificate of representation that is complete under this section except that such list ((~~shall~~)) must be amended to reflect the change. If the designated representative or alternate designated representative determines at any time that an owner or operator of the facility or supplier is not included in such list and such exclusion is not the result of a change in the owners and operators, the designated representative or any alternate designated representative ((~~shall~~)) must submit, within ninety days of making such determination, a certificate of representation that is complete under this section except that such list ((~~shall~~)) must be amended to include such owner or operator.

(9) **Certificate of representation.** A certificate of representation shall be complete if it includes the following elements in a format prescribed by ecology in accordance with this section:

(a) Identification of the facility or supplier for which the certificate of representation is submitted.

(b) The name, organization name (company affiliation-employer), address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(c) A list of the owners and operators of the facility or supplier identified in (a) of this subsection, provided that, if the list includes the operators of the facility or supplier and the owners with control of the facility or supplier, the failure to include any other owners ((~~shall~~)) must not make the certificate of representation incomplete.

(d) The following certification statements by the designated representative and any alternate designated representative:

(i) "I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the facility or binding on the supplier, as applicable."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under chapter 173-441 WAC on behalf of the owners and operators of the facility and on behalf of suppliers, as applicable, and that each such owner and operator ((~~shall~~)) must be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the supplier or owners and operators of the facility, as applicable, ((~~shall~~)) must be bound by any order issued to me by ecology, the pollution control hearings board, or a court regarding the facility or supplier."

(iv) "If there are multiple owners and operators of the facility or multiple suppliers, as applicable, I certify that I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the facility and each supplier."

(e) The signature of the designated representative and any alternate designated representative and the dates signed.

(10) **Documents of agreement.** Unless otherwise required by ecology, documents of agreement referred to in the certificate of representation shall not be submitted to ecology. Ecology shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(11) **Binding nature of the certificate of representation.** Once a complete certificate of representation under this section for a facility or supplier has been received, ecology will rely on the certificate of representation unless and until a later signed, complete certificate of representation under this section for the facility or supplier is received by ecology.

(12) **Objections concerning a designated representative.**

(a) Except as provided in subsection (7) of this section, no objection or other communication submitted to ecology concerning the authorization, or any representation, action, inaction, or submission, of the designated representative or alternate designated representative ((~~shall~~)) must affect any representation, action, inaction, or submission of the designated representative or alternate designated representative, or the finality of any decision or order by ecology under this chapter.

(b) Ecology will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative.

(13) **Delegation by designated representative and alternate designated representative.**

(a) A designated representative or an alternate designated representative may delegate his or her own authority, to one or more individuals, to submit an electronic submission to ecology provided for or required under this chapter, except for a submission under this subsection.

(b) In order to delegate his or her own authority, to one or more individuals, to submit an electronic submission to ecology in accordance with (a) of this subsection, the designated representative or alternate designated representative must submit electronically to ecology a notice of delegation, in a format prescribed by ecology, that includes the following elements:

(i) The name, organization name (company affiliation-employer), address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative.

(ii) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such individual (referred to as an "agent").

(iii) For each such individual, a list of the type or types of electronic submissions under (a) of this subsection for which authority is delegated to him or her.

(iv) For each type of electronic submission listed in accordance with subsection (13)(b)(iii) of this section, the facility or supplier for which the electronic submission may be made.

(v) The following certification statements by such designated representative or alternate designated representative:

(A) "I agree that any electronic submission to ecology that is by an agent identified in this notice of delegation and of a type listed, and for a facility or supplier designated, for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as applicable, and before this notice of delegation is superseded by another notice of delegation under WAC 173-441-060 (13)(c) ((~~shall~~)) must be deemed to be an electronic submission certified, signed, and submitted by me."

(B) "Until this notice of delegation is superseded by a later signed notice of delegation under WAC 173-441-060 (13)(c), I agree to maintain an e-mail account and to notify ecology immediately of any change in my e-mail address unless all delegation of authority by me under WAC 173-441-060(13) is terminated."

(vi) The signature of such designated representative or alternate designated representative and the date signed.

(c) A notice of delegation submitted in accordance with (b) of this subsection ((~~shall~~)) must be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by ecology and until receipt by ecology of another such notice that was signed later by such designated representative or alternate designated representative, as applicable. The later signed notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(d) Any electronic submission covered by the certification in (b)(v)(A) of this subsection and made in accordance with a notice of delegation effective under (c) of this subsection ((~~shall~~)) must be deemed to be an electronic submission certified, signed, and submitted by the designated representative or alternate designated representative submitting such notice of delegation.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-070 Report submittal. ((~~Each GHG report and certificate of representation for a facility or supplier must be submitted electronically in accordance with the requirements of WAC 173-441-050 and 173-441-060 and in a format specified by ecology.~~)) The following must be submitted electronically in accordance with the requirements of WAC 173-441-050 and 173-441-060 and in a format specified by ecology.

(1) Facility reporters:

(a) GHG report;

(b) Certificate of representation; and

(c) Verification software file.

(2) Transportation fuel suppliers:

(a) GHG report; and

(b) Certificate of representation.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-080 Standardized methods and conversion factors incorporated by reference. (1) The materials incorporated by reference by EPA in 40 C.F.R. § 98.7, as adopted ((~~or proposed by December 1, 2010~~)) by October 1, 2014, are incorporated by reference in this chapter for use in the sections of this chapter that correspond to the sections of 40 C.F.R. Part 98 referenced here.

(2) Table A–2 of this section provides a conversion table for some of the common units of measure used in this chapter.

Table A-2:
Units of Measure Conversions

To convert from	To	Multiply by
Kilograms (kg)	Pounds (lbs)	2.20462
Pounds (lbs)	Kilograms (kg)	0.45359
Pounds (lbs)	Metric tons	4.53592×10^{-4}
Short tons	Pounds (lbs)	2,000
Short tons	Metric tons	0.90718
Metric tons	Short tons	1.10231
Metric tons	Kilograms (kg)	1,000
Cubic meters (m^3)	Cubic feet (ft^3)	35.31467
Cubic feet (ft^3)	Cubic meters (m^3)	0.028317
Gallons (liquid, US)	Liters (l)	3.78541
Liters (l)	Gallons (liquid, US)	0.26417
Barrels of liquid fuel (bbl)	Cubic meters (m^3)	0.15891
Cubic meters (m^3)	Barrels of liquid fuel (bbl)	6.289
Barrels of liquid fuel (bbl)	Gallons (liquid, US)	42
Gallons (liquid, US)	Barrels of liquid fuel (bbl)	0.023810
Gallons (liquid, US)	Cubic meters (m^3)	0.0037854
Liters (l)	Cubic meters (m^3)	0.001
Feet (ft)	Meters (m)	0.3048
Meters (m)	Feet (ft)	3.28084
Miles (mi)	Kilometers (km)	1.60934
Kilometers (km)	Miles (mi)	0.62137
Square feet (ft^2)	Acres	2.29568×10^{-5}
Square meters (m^2)	Acres	2.47105×10^{-4}
Square miles (mi^2)	Square kilometers (km^2)	2.58999
Degrees Celsius (°C)	Degrees Fahrenheit (°F)	°C = (5/9) x (°F - 32)
Degrees Fahrenheit (°F)	Degrees Celsius (°C)	°F = (9/5) x (°C + 32)
Degrees Celsius (°C)	Kelvin (K)	K = °C + 273.15
Kelvin (K)	Degrees Rankine (°R)	1.8
Joules	Btu	9.47817×10^{-4}

To convert from	To	Multiply by
Btu	MMBtu	1 x 10^{-6}
Pascals (Pa)	Inches of Mercury (in Hg)	2.95334 x 10^{-4}
Inches of Mercury (in Hg)	Pounds per square inch (psi)	0.49110
Pounds per square inch (psi)	Inches of Mercury (in Hg)	2.03625

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-090 Compliance and enforcement. (1) **Violations.** Any violation of any requirement of this chapter ((~~shall~~)) must be a violation of chapter 70.94 RCW and subject to enforcement as provided in that chapter. A violation includes, but is not limited to, failure to report GHG emissions by the reporting deadline, failure to report accurately, failure to collect data needed to calculate GHG emissions, failure to continuously monitor and test as required, failure to retain records needed to verify the amount of GHG emissions, failure to calculate GHG emissions following the methodologies specified in this chapter, and failure to pay the required reporting fee. Each day of a violation constitutes a separate violation.

(2) **Enforcement responsibility.** Ecology ((~~shall~~)) must enforce the requirements of this chapter unless ecology approves a local air authority's request to enforce the requirements for persons operating within the authority's jurisdiction.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-100 Addresses. All requests, notifications, and communications to ecology pursuant to this chapter, ((~~other than submittal of the annual GHG report, shall~~)) must be submitted ((~~to~~)) in a format as specified by ecology to either of the following ((~~address~~)):

(1) For U.S. mail. Greenhouse Gas Report, Air Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600.

(2) For e-mail. ghgreporting@ecy.wa.gov.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-120 Calculation methods incorporated by reference from 40 C.F.R. Part 98 for facilities. Owners and operators of facilities that are subject to this chapter must follow the requirements of this chapter and all subparts of 40 C.F.R. Part 98 listed in Table 120-1 of this section. If a conflict exists between a provision in WAC 173-441-050(3) through 173-441-080 and any applicable provision of this section, the requirements of this section ((~~shall~~)) must take precedence.

(1) **Source categories and calculation methods for facilities.** An owner or operator of a facility subject to the requirements of this chapter must report GHG emissions, including GHG emissions from biomass, from all applicable source categories in Washington state listed in Table 120-1 of this section using the methods incorporated by reference in Table 120-1. Table 120-1 and subsection (2) of this section list modifications and exceptions to calculation methods adopted by reference in this section. CO_2 collected and transferred ((~~off site~~)) off site must be included in the emissions calculation as required under WAC 173-441-030 (1)(b)(iv) using the methods established in 40 C.F.R. Part 98 Subpart PP as adopted ((~~or proposed by December 1, 2010~~)) by October 1, 2014. Owners or operators are not required to comply with requirements in Subpart PP that do not address CO_2 collected and transferred ((~~off site~~)) off site.

Table 120-1:
Source Categories and Calculation Methods
Incorporated by Reference from 40 C.F.R. Part 98 for Facilities

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria+#
General Stationary Fuel Combustion Sources	C	
Electricity Generation	D	
Adipic Acid Production	E	
Aluminum Production	F	
Ammonia Manufacturing	G	
Cement Production	H	

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria+#
Electronics Manufacturing	I	In § 98.91, replace "To calculate total annual GHG emissions for comparison to the 25,000 metric ton CO_2e per year emission threshold in paragraph § 98.2 (a)(2), follow the requirements of § 98.2(b), with one exception" with "To calculate GHG emissions for comparison to the emission threshold in WAC 173-441-030(1), follow the requirements of WAC 173-441-030 (1)(b), with one exception."
Ferroalloy Production	K	
Fluorinated Gas Production	L	In § 98.121, replace "To calculate GHG emissions for comparison to the 25,000 metric ton CO_2e per year emission threshold in § 98.2 (a)(2)" with "To calculate GHG emissions for comparison to the emission threshold in WAC 173-441-030(1)."
Glass Production	N	
HCFC-22 Production and HFC-23 Destruction	O	
Hydrogen Production	P	
Iron and Steel Production	Q	
Lead Production	R	
Lime Manufacturing	S	
Magnesium Production	T	
Miscellaneous Uses of Carbonate	U	
Nitric Acid Production	V	
Petroleum and Natural Gas Systems	W	§ 98.231(a) should read: "You must report GHG emissions under this subpart if your facility contains petroleum and natural gas systems and the facility meets the requirements of WAC 173-441-030(1)."
Petrochemical Production	X	
Petroleum Refineries	Y	
Phosphoric Acid Production	Z	
Pulp and Paper Manufacturing	AA	
Silicon Carbide Production	BB	
Soda Ash Manufacturing	CC	
((~~Use of~~)) Electrical Transmission and Distribution Equipment Use	DD	§ 98.301 should read: "You must report GHG emissions under this subpart if your facility contains any ((~~use of~~)) electrical transmission and distribution equipment use process and the facility meets the requirements of WAC 173-441-030(1)." See subsection (2)(f) of this section.
Titanium Dioxide Production	EE	
Underground Coal Mines	FF	
Zinc Production	GG	
Municipal Solid Waste Landfills	HH	CO_2 from combustion of landfill gas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria+#
Industrial Wastewater Treatment	II	CO_2 from combustion of wastewater biogas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.
Manure Management	JJ	See subsection (2)(e) of this section.
Suppliers of Carbon Dioxide	PP	Owners or operators are only required to calculate and report emissions specified in WAC 173-441-030 (1)(b)(iv).
((~~Carbon Dioxide Injection and~~)) Geologic Sequestration of Carbon Dioxide	RR((~~**~~))	§ 98.441(a) should read: "You must report GHG emissions under this subpart if any well or group of wells within your facility injects any amount of CO_2 for long-term containment in subsurface geologic formations and the facility meets the requirements of WAC 173-441-030(1)."
Electrical Equipment Manufacture or Refurbishment	SS	§ 98.451 should read: "You must report GHG emissions under this subpart if your facility contains an electrical equipment manufacturing or refurbishing process and the facility meets the requirements of WAC 173-441-030(1)."
Industrial Waste Landfills	TT	CO_2 from combustion of landfill gas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.
Injection of Carbon Dioxide	UU	§ 98.471 should read: "(a) You must report GHG emissions under this subpart if your facility contains an injection of carbon dioxide process and the facility meets the requirements of WAC 173-441-030(1). For purposes of this subpart, any reference to CO_2 emissions in WAC 173-441-030 means CO_2 received."

* Unless otherwise noted, all calculation methods are from 40 C.F.R. Part 98, as adopted ((~~or proposed by December 1, 2010~~)) by October 1, 2014.

((~~** From 40 C.F.R. Part 98, as proposed on April 12, 2010.~~))

\+ Modifications and exceptions in subsection (2) of this section and WAC 173-441-173-010 through 173-441-050(2) also apply.

\# Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

(2) **Modifications and exceptions to calculation methods adopted by reference.** Except as otherwise specifically provided:

(a) Wherever the term "administrator" is used in the rules incorporated by reference in this chapter, the term "director" ((~~shall~~)) must be substituted.

(b) Wherever the term "EPA" is used in the rules incorporated by reference in this chapter, the term "ecology" ((~~shall~~)) must be substituted.

(c) Wherever the term "United States" is used in the rules incorporated by reference in this chapter, the term "Washington state" ((~~shall~~)) must be substituted.

(d) Wherever a calculation method adopted by reference in Table 120-1 of this section or a definition adopted by reference from 40 C.F.R. Part 98.6 refers to another subpart or paragraph of 40 C.F.R. Part 98:

(i) If Table 120-2 of this section lists the reference, then replace the reference with the corresponding reference to this chapter as specified in Table 120-2.

(ii) If the reference is to a subpart or subsection of a reference listed in Table 120-2 of this section, then replace the reference with the appropriate subsection of the corresponding reference to this chapter as specified in Table 120-2.

(iii) If the reference is to a subpart or paragraph of 40 C.F.R. Part 98 Subparts C through ((~~TT~~)) UU incorporated by reference in Table 120-1, then use the existing reference except as modified by this chapter.

(e) For manure management, use the following subsections instead of the corresponding subsections in 40 C.F.R. § 98.360 as adopted ((~~or proposed by December 1, 2010~~)) by October 1, 2014.

(i) 40 C.F.R. § 98.360(a): This source category consists of livestock facilities with manure management systems.

(A) § 98.360 (a)(1) is not adopted by reference.

(B) § 98.360 (a)(2) is not adopted by reference.

(ii) 40 C.F.R. § 98.360(b): A manure management system (MMS) is a system that stabilizes and/or stores livestock manure, litter, or manure wastewater in one or more of the following system components: Uncovered anaerobic lagoons, liquid/slurry systems with and without crust covers (including, but not limited to, ponds and tanks), storage pits, digesters, solid manure storage, dry lots (including feedlots), high-rise houses for poultry production (poultry without litter), poultry production with litter, deep bedding systems for cattle and swine, manure composting, and aerobic treatment.

(iii) 40 C.F.R. § 98.360(c): This source category does not include system components at a livestock facility that are

unrelated to the stabilization and/or storage of manure such as daily spread or pasture/range/paddock systems or land application activities or any method of manure utilization that is not listed in § 98.360(b) as modified in WAC 173-441-120 (2)(e)(ii).

(iv) 40 C.F.R. § 98.360(d): This source category does not include manure management activities located off-site from a livestock facility or off-site manure composting operations.

(v) 40 C.F.R. § 98.361: Livestock facilities must report GHG emissions under this subpart if the facility contains a manure management system as defined in 98.360(b) as modified in WAC 173-441-120 (2)(e)(ii), and meets the requirements of WAC 173-441-030(1).

(vi) 40 C.F.R. § 98.362 (b) and (c) are not adopted by reference.

(vii) 40 C.F.R. § 98.362(a), 40 C.F.R. § 98.363 through 40 C.F.R. § 98.368, Equations JJ-2 through JJ-15, and Tables JJ-2 through JJ-7 as adopted ((~~or proposed by December 1, 2010~~)) by October 1, 2014, remain unchanged unless otherwise modified in this chapter.

(viii) CO_2 from combustion of gas from manure management must also be included in calculating emissions for reporting and determining if the reporting threshold is met.

(f) For electrical transmission and distribution equipment use facilities where the electrical power system crosses Washington state boundaries, limit the GHG report to emissions that occur in Washington state using one of the following methods:

(i) Direct, state specific measurements;

(ii) Prorate the total emissions of the electric power system based upon either nameplate capacity or transmission line miles in the respective service areas by state using company records. Update the nameplate capacity or transmission line miles factor each reporting year and include the data used to establish the nameplate capacity or transmission line miles factor with your annual GHG report.

(iii) Prorate the total emissions of the electric power system based upon population in the respective service areas by state using the most recent U.S. Census data. Update the population factor each reporting year and include the data used to establish the population factor with your annual GHG report.

(g) Use the following method to obtain specific version or date references for any reference in 40 C.F.R. Part 98 that refers to any document not contained in 40 C.F.R. Part 98:

(i) If the reference in 40 C.F.R. Part 98 includes a specific version or date reference, then use the version or date as specified in 40 C.F.R. Part 98.

(ii) If the reference in 40 C.F.R. Part 98 does not include a specific version or date reference, then use the version of the referenced document as available on the date of adoption of this chapter.

Table 120-2:
Corresponding References in 40 C.F.R. Part 98 and Chapter 173-441 WAC

Reference in 40 C.F.R. Part 98		Corresponding Reference in Chapter 173-441 WAC	
Section	**Topic**	**Section**	**Topic**
40 C.F.R. Part 98 or "part"	Mandatory Greenhouse Gas Reporting	Chapter 173-441 WAC	Reporting of Emissions of Greenhouse Gases
Subpart A	General Provision	WAC 173-441-010 through 173-441-100	General Provisions
§ 98.1	Purpose and scope	WAC 173-441-010	Scope
§ 98.2	Who must report?	WAC 173-441-030	Applicability
§ 98.2(a)	Applicability: Facility reporting	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(1)	Applicability: Facility reporting Table A-3	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(2)	Applicability: Facility reporting Table A-4	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(3)	Applicability: Facility reporting source categories that meet all three of the conditions listed in this paragraph (a)(3)	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(4)	Applicability: Facility reporting Table A-5 source categories	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2(b)	Calculating emissions for comparison to the threshold	WAC 173-441-030 (1)(b)	Calculating facility emissions for comparison to the threshold
§ 98.2(i)	Reporting requirements when emissions of greenhouse gases fall below reporting thresholds	WAC 173-441-030(5)	Reporting requirements when emissions of greenhouse gases fall below reporting thresholds
§ 98.3	What are the general monitoring, reporting, recordkeeping and verification requirements of this part?	WAC 173-441-050	General monitoring, reporting, recordkeeping and verification requirements
§ 98.3(c)	Content of the annual report	WAC 173-441-050(3)	Content of the annual report

Reference in 40 C.F.R. Part 98		Corresponding Reference in Chapter 173-441 WAC	
Section	**Topic**	**Section**	**Topic**
§ 98.3(g)	Recordkeeping	WAC 173-441-050(6)	Recordkeeping
§ 98.3 (g)(5)	A written GHG monitoring plan	WAC 173-441-050 (6)(e)	A written GHG monitoring plan
§ 98.3(i)	Calibration accuracy requirements	WAC 173-441-050(8)	Calibration and accuracy requirements
§ 98.3 (i)(6)	Calibration accuracy requirements: Initial calibration	WAC 173-441-050 (8)(f)	Calibration accuracy requirements: Initial calibration
§ 98.4	Authorization and responsibilities of the designated representative	WAC 173-441-060	Authorization and responsibilities of the designated representative
§ 98.5	How is the report submitted?	WAC 173-441-070	Report submittal
§ 98.5(b)	Verification software	WAC 173-441-070(1)	Facility report submittal
§ 98.6	Definitions	WAC 173-441-020	Definitions
§ 98.7	What standardized methods are incorporated by reference into this part?	WAC 173-441-080	Standardized methods and conversion factors incorporated by reference
§ 98.8	What are the compliance and enforcement provisions of this part?	WAC 173-441-090	Compliance and enforcement
§ 98.9	Addresses	WAC 173-441-100	Addresses
Table A-1 to Subpart A of Part 98—Global Warming Potentials, Table A-1 of this part, or Table A-1 of this subpart	Global Warming Potentials	Table A-1 of WAC 173-441-040	Global Warming Potentials
Table A-2 to Subpart A of Part 98—Units of Measure Conversions	Units of Measure Conversions	Table A-2 of WAC 173-441-080	Units of Measure Conversions

(3) **Calculation methods for voluntary reporting.** GHG emissions reported voluntarily under WAC 173-441-030(4) must be calculated using the following methods:

(a) If the GHG emissions have calculation methods specified in Table 120-1 of this section, use the methods specified in Table 120-1.

(b) If the GHG emissions have calculation methods specified in WAC 173-441-130, use the methods specified in WAC 173-441-130.

(c) For all GHG emissions from facilities not covered in Table 120-1 of this section or persons supplying any product other than those listed in WAC 173-441-130, contact ecology for an appropriate calculation method no later than one hundred eighty days prior to the emissions report deadline established in WAC 173-441-050(2) or submit a petition for alternative calculation methods according to the requirements of WAC 173-441-140.

(4) **Alternative calculation methods approved by petition.** An owner or operator may petition ecology to use calculation methods other than those specified in Table 120-1 of this section to calculate its facility GHG emissions. Such alternative calculation methods must be approved by ecology prior to reporting and must meet the requirements of WAC 173-441-140.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-130 Calculation methods for suppliers. Suppliers of liquid motor vehicle fuel, special fuel, or aircraft fuel subject to the requirements of this chapter must calculate the CO_2 emissions that would result from the complete combustion or oxidation of each fuel that is reported to DOL as sold in Washington state using the methods in this section.

(1) **Applicable fuels.** Suppliers are responsible for calculating CO_2 emissions from the following applicable fossil fuels and biomass derived fuels:

(a) All taxed liquid motor vehicle fuel that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of motor vehicle fuel sales under chapter 308-72 WAC.

(b) All taxed special fuel that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of special fuel sales under chapter 308-77 WAC.

(c) All taxed and untaxed aircraft fuel supplied to end users that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of aircraft fuel under chapter 308-78 WAC.

(2) Calculating CO_2 emissions separately for each fuel type. CO_2 emissions must be calculated separately for each applicable fuel type using Equation 130-1 of this section. Use Equation 130-2 of this section to separate each blended fuel into pure fuel types prior to calculating emissions using Equation 130-1.

$$CO_{2i} = \text{Fuel Type}_i \times EF_i \qquad \text{(Eq. 130 - 1)}$$

Where:

CO_{2i} = Annual CO_2 emissions that would result from the complete combustion or oxidation of each fuel type "i" (metric tons)

Fuel Type_i = Annual volume of fuel type "i" supplied by the supplier (gallons).

EF_i = Fuel type-specific CO_2 emission factor (metric tons CO_2 per gallon) found in Table 130-1 of this section.

$Fuel\ Type_i = Fuel_i \times \%Vol_i$ (Eq. 130 - 2)

Where:

$Fuel\ Type_i$ = Annual volume of fuel type "i" supplied by the supplier (gallons).

$Fuel_i$ = Annual volume of blended fuel "i" supplied by the supplier (gallons).

$\%Vol_i$ = Percent volume of product "i" that is fuel $type_i$.

(3) **Calculating total CO_2 emissions.** A supplier must calculate total annual CO_2 emissions from all fuels using Equation 130-3 of this section.

$$CO_{2x} = \sum (CO_{2i}) \quad (Eq. 130 - 3)$$

Where:

CO_{2x} = Annual CO_2 emissions that would result from the complete combustion or oxidation of all fuels (metric tons).

CO_{2i} = Annual CO_2 emissions that would result from the complete combustion or oxidation of each fuel type "i" (gallons).

(4) **Monitoring and QA/QC requirements.** Comply with all monitoring and QA/QC requirements under chapters 308-72, 308-77, and 308-78 WAC.

(5) **Data recordkeeping requirements.** In addition to the annual GHG report required by WAC 173-441-050 (6)(c), the following records must be retained by the supplier in accordance with the requirements established in WAC 173-441-050(6):

(a) For each fuel type listed in Table 130-1 of this section, the annual quantity of applicable fuel in gallons of pure fuel supplied in Washington state.

(b) The CO_2 emissions in metric tons that would result from the complete combustion or oxidation of each fuel type for which subsection (5)(a) of this section requires records to be retained, calculated according to subsection (2) of this section.

(c) The sum of biogenic CO_2 emissions that would result from the complete combustion oxidation of all supplied fuels, calculated according to subsection (3) of this section.

(d) The sum of nonbiogenic and biogenic CO_2 emissions that would result from the complete combustion oxidation of all supplied fuels, calculated according to subsection (3) of this section.

(e) All records required under chapters 308-72, 308-77, and 308-78 WAC in the format required by DOL.

Table 130-1:
Emission Factors for Applicable Liquid Motor Vehicle Fuels, Special Fuels, and Aircraft Fuels

Fuel Type (pure fuel)	Emission Factor (metric tons CO_2 per gallon)
Gasoline	0.008960
Ethanol (E100)	0.005767
Diesel ((~~(B100)~~))	0.010230
Biodiesel (B100)	0.009421
Propane	0.005593
Natural gas	0.000055*
Kerosene	0.010150
Jet fuel	0.009750
Aviation gasoline	0.008310

Contact ecology to obtain an emission factor for any applicable fuel type not listed in this table.

*In units of metric tons CO_2 per scf. When using Equation 130-1 of this section, enter fuel in units of scf.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-140 Petitioning ecology to use an alternative calculation method to calculate greenhouse gas emissions. An owner or operator may petition ecology to use calculation methods other than those specified in WAC 173-441-120 to calculate GHG emissions. Alternative calculation methodologies are not available for GHG emissions covered by a source category adopted by reference in WAC 173-441-130. The following requirements apply to the submission, review, and approval or denial of a petition:

(1) **Petition submittal.** An owner or operator must submit a petition that meets the following conditions before ecology may review the petition and issue a determination.

(a) An owner or operator must submit a complete petition no later than one hundred eighty days prior to the emissions report deadline established in WAC 173-441-050(2). Such petition must include sufficient information, as described in (b) of this subsection, for ecology to determine whether the proposed alternative calculation method will provide emissions data sufficient to meet the reporting requirements of RCW 70.94.151. Ecology will notify the owner or operator within thirty days of receipt of a petition of any additional information ecology requires to approve the proposed calculation methods in the petition. If a petition is under review by ecology at the time an annual emissions report is due under WAC 173-441-050(2), the owner or operator must submit the emissions report using the calculation methods approved under this chapter at the time of submittal of the emissions report.

(b) The petition must include, at a minimum, the following information:

(i) Identifying information as specified in WAC 173-441-060 (9)(b) and 173-441-060 (13)(b)(ii) of the designated representative and any agent submitting a petition;

(ii) Identifying information as specified in WAC 173-441-050 (3)(a) of the facility or facilities where the owner or operator proposes to use the alternative calculation method;

(iii) A clear and complete reference to the subparts or sections in EPA's mandatory greenhouse gas reporting regulation that contain the alternative calculation method and the date that EPA adopted the subparts or sections;

(iv) The source categories that will use the alternative calculation method;

(v) The date that the owner or operator intends to start using the alternative calculation method;

(vi) Any other supporting data or information as requested by ecology as described in subsection (2) of this section; and

(vii) The designated representative must sign and date the petition.

(2) **Ecology review of the petition.** Ecology must approve the alternative calculation method before the owner or operator may use it to report GHG emissions. Ecology will issue a determination within sixty days of receiving a complete petition. The alternative calculation method must meet the following conditions:

(a) Except as noted in (b) of this subsection, alternative calculation methods for facilities required to report under WAC 173-441-030(1) must be methods adopted by the United States Environmental Protection Agency in its mandatory greenhouse gas reporting regulation. The alternative calculation method must be more recent than the method for the given source category adopted by reference in WAC 173-441-120.

(b) ((~~As of November 9, 2010, the United States Environmental Protection Agency had not adopted a final GHG reporting protocol for carbon dioxide injection and geologic sequestration. Facilities with emissions in this source category that are required to report under WAC 173-441-030(1) may use alternative calculation methods approved by ecology using the criteria established in (c)(ii)(A) and (B) of this subsection until the United States Environmental Protection Agency adopts a final protocol for that source category in 40 C.F.R. Part 98. Beginning January 1st of the first year reporting is required for the source category by the United States Environmental Protection Agency under a final protocol in 40 C.F.R. Part 98, emissions from the source category must be reported to ecology using either the protocol adopted in Table 120-1 of WAC 173-441-120 or a protocol approved by ecology under (a) of this subsection.~~

~~(c)~~)) For GHG emissions reported voluntarily under WAC 173-441-030(4), ecology must apply the following criteria when evaluating an alternative calculation method:

(i) If the GHG emissions are covered by a source category adopted by reference in WAC 173-441-120, then the requirements of (a) and (b) of this subsection apply.

(ii) If the GHG emissions are not covered by a source category adopted by reference in WAC 173-441-120 or 173-441-130, then ecology must consider whether the methods meet the following criteria:

(A) The alternative calculation method is established by a nationally or internationally recognized body in the field of GHG emissions reporting such as:

(I) Ecology;

(II) EPA;

(III) The International Panel on Climate Change;

(IV) The Western Climate Initiative;

(V) The Climate Registry;

(B) If an alternative calculation method is not available from sources listed in ((~~(c)~~)) (b)(ii)(A) of this subsection, then ecology may accept a method from an industry or trade association or devised by the owner or operator if ecology determines the alternative calculation method is consistent with the requirements established under RCW 70.94.151.

((~~(d)~~)) (c) For all source categories, including those covered in (a)((~~, (b),~~)) and ((~~(c)~~)) (b) of this subsection, the alternative calculation method must be consistent in content and scope with the requirements established under RCW 70.94.151. In the event that a proposed alternative calculation method does not include all required GHG emissions, the owner or operator must use the calculation methods specified in subsection (3) of this section to calculate those emissions.

(3) **Calculating emissions not included in alternative calculation method.** An owner or operator must report all source categories of GHG emissions for which reporting is required under RCW 70.94.151 and for which calculation methods have been established in WAC 173-441-120 or 173-441-130. If an approved alternative calculation method does not include calculation methods for all required source categories of emissions, then the owner or operator must use a method described in WAC 173-441-120, 173-441-130, or approved for the owner or operator by ecology in a separate petition to calculate and report those emissions.

(4) **Appeal of determination.** An approval or denial issued by ecology in response to a written petition filed under this subsection is a determination appealable to the pollution control hearings board per RCW 43.21B.110 (1)(h).

WSR 14-21-136
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed October 20, 2014, 4:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-177.

Title of Rule and Other Identifying Information: WAC 182-502A-0101 Program integrity—Purpose, 182-502A-0201 Program integrity—Definitions, 182-502A-0301 Program integrity—Authority to conduct program integrity activities, 182-502A-0401 Program integrity activities, 182-502A-0501 Program integrity—Entity self-audits, 182-502A-0601 Program integrity—Extrapolation, 182-502A-0701 Program integrity activity—Agency outcomes, 182-502A-0801 Program integrity—Dispute resolution process and 182-502A-0901 Program integrity activity—Adjudicative proceedings; and repealing WAC 182-502A-0100, 182-

502A-0200, 182-502A-0300, 182-502A-0400, 182-502A-0500, 182-502A-0600, 182-502A-0700, 182-502A-0800, 182-502A-0900, 182-502A-1000, 182-502A-1100, 182-502A-1200, and 182-502A-1300.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreet DirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on November 25, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than November 26, 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, fax (360) 586-9727, by 5:00 p.m. on November 25, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by November 17, 2014, TTY (800) 848-5429, or (360) 725-1307, or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising chapter 182-502A WAC to align with national program integrity efforts and oversight, provide clarification of existing provider review and audit processes, and incorporate new program integrity activities.

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: Jason R. P. Crabbe, Olympia, Washington 98504-2716, (360) 725-1346; Implementation and Enforcement: Lisa DeLaVergne, Olympia, Washington 985503 [98503], (360) 725-1705.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

October 20, 2014
Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-502A-0101 Program integrity—Purpose. The medicaid agency conducts program integrity activities to identify and prevent or recover improper agency payments.

NEW SECTION

WAC 182-502A-0201 Program integrity—Definitions. The definitions in this section and those found in chapter 182-500 WAC apply throughout this chapter.

Agency means the Washington state health care authority and includes the agency's designees.

Algorithm means the set of rules applied to claim or encounter data to identify overpayments.

Audit means an examination of claims data, an entity's records, or both, to determine whether the entity has complied with applicable rules, regulations, and agreements.

Audit, on-site means an audit conducted partially at an entity's place of business.

Audit, self means an audit conducted by the entity and reviewed by the agency or its designee.

Contractor includes regional support networks (RSNs) as defined in WAC 182-500-0095, managed care organizations (MCOs) as defined in WAC 182-538-050, and any other organization that oversees how health benefits are provided to clients on the agency's behalf.

Credible allegation of fraud means the agency has investigated an allegation of fraud and concluded that the existence of fraud is more probable than not.

Data mining means using software to detect patterns or aberrancies in a data set.

Designee means a person the agency has designated to perform program integrity activities on its behalf.

Encounter includes any service provided by a federally qualified health center, rural health clinic, or tribe, which is paid an enhanced rate; and any service provided to a Washington apple health client who is covered by an MCO or other contractor, and reported to the agency.

Entity includes current and former contractors, providers, and their subcontractors.

Extrapolation means a method of estimating an unknown value by projecting the results of a sample to the universe from which the sample was drawn.

Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to oneself or some other person. This includes any act that constitutes fraud under applicable federal or state law. See 42 C.F.R. 455.2.

Improper payment means any payment by the agency that was more than or less than the sum to which the payee was legally entitled.

Overpayment see RCW 41.05A.010, including any subsequent amendments.

Payee includes providers who are reimbursed by agency-contracted managed care organizations.

Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, public corporation, or any other legal or commercial entity.

Program integrity activities means those activities conducted by the agency's office of program integrity or its designees to determine compliance with any law, rule, or agreement.

Record means any document or electronically stored information including, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the entity into a reasonably usable form.

Universe means a defined population of claims or encounters or both.

NEW SECTION

WAC 182-502A-0301 Program integrity—Authority to conduct program integrity activities. The medicaid agency may conduct program integrity activities and designate agents to do so on its behalf, on all Title XIX, Title XXI, and state-only-funded expenditures. See 42 C.F.R. 431, 447, 455, and 456; 45 C.F.R. 92; 42 U.S.C. 1396a; and chapters 41.05, 41.05A, and 74.09 RCW.

NEW SECTION

WAC 182-502A-0401 Program integrity activities. (1) **Form.** Program integrity activities include:

(a) Conducting audits;

(b) Conducting reviews;

(c) Conducting investigations;

(d) Initiating and reviewing entity self-audits under WAC 182-502A-0650;

(e) Applying algorithms to claim or encounter data;

(f) Conducting unannounced on-site inspections of entity locations; and

(g) Verifying entity compliance with applicable laws, rules, regulations, and agreements.

(2) **Location.** Program integrity activities may occur:

(a) On the premises of the medicaid agency;

(b) On the premises of the entity.

(3) **Timing.** The agency may commence program integrity activities concerning any current or former agency-contracted entity or agent thereof at any time up to six years after the date of service.

(4) **Notice.** Hospitals are entitled to notice as described in RCW 70.41.045(4).

(5) **Selecting information to evaluate.**

(a) The agency may evaluate any information relevant to validating that the payee received only those funds to which it is legally entitled. In this chapter, "relevant" has a meaning identical to Federal Rule of Evidence 401.

(b) The agency may select information to evaluate by:

(i) Applying algorithms;

(ii) Data mining;

(iii) Claim-by-claim review;

(iv) Encounter-by-encounter review;

(v) Stratified random sampling;

(vi) Nonstratified random sampling; or

(vii) Applying any other method, or combination of methods, designed to identify relevant information.

(6) **Collecting records to evaluate.** The entity must submit a copy of all records requested by the agency.

(a) The entity must submit requested records to the agency within the time frame stated in the request.

(b) If an entity fails to timely comply with the request, the agency may:

(i) Deny the entity's claim under a prepay review process;

(ii) Issue a draft audit report or preliminary review notice; or

(iii) Issue a final audit report or notice of improper payment.

(c) An entity that fails to timely comply with a request under (a) of this subsection has no right to contest at an administrative hearing an agency action taken under (b)(i) of this subsection.

(d) The entity must submit records electronically unless the agency has given the entity written permission to submit the records in hard copy.

(e) Once a program integrity activity has commenced, the entity must retain all original records and supportive materials until the program integrity activity is completed and all issues resolved, even if the period of retention extends beyond the required six-year period.

(7) **Evaluating information.**

(a) The agency may evaluate relevant information by applying any method or combination of methods reasonably calculated to determine whether an entity has complied with an applicable law, regulation, or agreement.

(b) Upon request, the entity is entitled to a description of the method or combination of methods used by the agency under subsection (5) of this section.

(8) **Nonbilled services.** Nonbilled services include any item, drug, code, or payment group that a provider does not submit on the provider's claim to the agency or contractor. When calculating improper payments, the agency does not include nonbilled services in its calculations.

(9) **Conducting on-site audits.** The agency may conduct on-site audits at any entity location.

(a) The agency may create a copy of the entity's records during an on-site audit.

(b) Failure to grant the agency access to the premises constitutes failure to comply with a program integrity activity.

(10) **Conducting interviews.** The agency may interview any person it reasonably believes has relevant information under subsection (5) of this section.

(a) If the interview request was made in writing, the requested interviewee must submit to an interview within the time frame stated in the request.

(b) Interviews may consist of one or more sessions.

(11) **Costs.** The agency does not reimburse the costs an entity incurs complying with program integrity activities.

(12) **Conducting site visits.** The agency may conduct unannounced on-site inspections of any entity location to determine whether the entity is complying with all applicable laws, rules, regulations, and agreements.

NEW SECTION

WAC 182-502A-0501 Program integrity—Entity self-audits. (1) The agency may require an entity to self-audit.

(a) The agency will give written notice of the instruction to self-audit.

(b) The entity must acknowledge receipt of the notice within thirty calendar days of receiving it.

(c) The entity must comply with all terms included in the notice; failure to timely comply with the notice constitutes failure to comply with a program integrity activity.

(d) The agency will review the self-audit and state in writing whether it accepts or rejects the results of the self-audit. If the agency rejects the results it may:

(i) Instruct the entity to repeat the self-audit; or

(ii) Audit the entity.

(2) The entity may initiate a self-audit at any time. If the entity initiates a self-audit, it must:

(a) Submit to the agency written notice of its intent to self-audit that identifies each claim included in the self-audit.

(b) Report and repay the overpayment to the agency within sixty calendar days of identifying an overpayment, unless the overpayment is one of the following:

(i) Included in an active state or federal program integrity activity.

(ii) Related to a state-initiated rate adjustment, cost settlement, or other payment adjustment.

(c) The entity's overpayment report must include:

(i) The reason for the overpayment;

(ii) How the entity calculated the overpayment; and

(iii) A list of claims associated with the overpayment.

(d) The agency will review the self-audit and state in writing whether it accepts or rejects the methodology and findings. If the agency rejects the findings it may:

(i) Instruct the entity to repeat the self-audit; or

(ii) Audit the entity.

(e) The agency will not accept any identified overpayment as full or final repayment before the completion of its review of the entity's self-audit findings.

(3) The entity's dispute and appeal rights under this section are identical to its rights during an audit conducted by the office of program integrity.

NEW SECTION

WAC 182-502A-0601 Program integrity—Extrapolation. (1) To determine an improper payment from a probability sample, the agency may extrapolate to the universe from which the probability sample was drawn.

(2) If an entity adjusts or rebills a claim or encounter that is part of the audit sample or universe, the original claim or encounter amount remains in the audit sample or universe.

(3) When the agency uses the results of an audit sample to extrapolate the amount to be recovered, the entity is entitled to the following information upon request:

(a) The sample size.

(b) The method used to select the sample.

(c) The universe from which the sample was drawn.

(d) Any formulas or calculations used to determine the amount of the improper payment.

NEW SECTION

WAC 182-502A-0701 Program integrity activity—Agency outcomes. (1) Following the agency's evaluation of an entity's records, claims, encounter data, or payments, the agency may do any combination of the following:

(a) Deny a claim.

(b) Adjust or recover an improperly paid claim.

(c) Instruct the entity to submit:

(i) Additional documentation.

(ii) A claim adjustment or a new claim. The entity must submit a claim adjustment or a new claim within sixty calendar days from the date of the agency's instruction or the claim adjustment or new claim will be denied. An entity has no right to an adjudicative hearing for denial under (c)(ii) of this subsection.

(d) Request a refund of an improper payment to the agency by check.

(e) Refer an overpayment to the office of financial recovery for collection.

(f) Issue a draft audit report or preliminary review notice that lists preliminary findings and alleged improper payments, which the entity may dispute under WAC 182-502A-1150.

(i) If an entity agrees with the preliminary findings and alleged improper payments before the deadline noted in the report or notice, the entity must notify the agency in writing. The agency will then issue a final audit report or notice of improper payment.

(ii) If an entity does not respond by the deadline noted in the report or notice, the agency will issue a final audit report or notice of improper payment, unless the agency extends the deadline.

(g) Issue a final audit report, overpayment notice, or notice of improper payment, which the entity may appeal under WAC 182-502A-1250.

(h) Recover interest under RCW 41.05A.220.

(i) Impose civil penalties under RCW 74.09.210.

(j) Refer the entity to appropriate licensing authorities for disciplinary action.

(k) Refer the entity to the medical dental advisory committee for termination of the CPA.

(l) Determine it has sufficient evidence to make a credible allegation of fraud. The agency will then:

(i) Refer the case to the medicaid fraud control unit and any other appropriate prosecuting authority for further action; and

(ii) Suspend some or all Washington apple health payments to the entity unless the agency determines there is good cause not to suspend payments under 42 C.F.R. 455.23.

(2) At any time during a program integrity activity, the agency may issue a final audit report or a notice of improper payment if the entity:

(a) Stops doing business with the agency;

(b) Transfers control of the business;

(c) Makes a suspicious asset transfer;

(d) Files for bankruptcy; or

(e) Fails to comply with program integrity activities.

(3) The entity must repay any overpayment identified by the agency within sixty calendar days of being notified of the overpayment.

NEW SECTION

WAC 182-502A-0801 Program integrity—Dispute resolution process. (1) An entity may object to a draft audit report or preliminary review notice. The objection must:

(a) Be in writing;

(b) State each objection and identify why the entity thinks the finding is incorrect;

(c) Present supporting evidence;

(d) State the relief sought; and

(e) Be received by the agency within thirty calendar days of the date the entity received the draft audit report or preliminary review notice.

(2) The objection may include a request for a dispute resolution conference (DRC).

(a) If the agency grants the entity's request for a DRC, the DRC must occur within sixty calendar days of the date the entity received the agency's written acceptance of the request for a DRC.

(b) At least five business days before the DRC, the entity must notify the agency of who will attend the DRC on the entity's behalf.

(3) Following the timely submission of a written objection under subsection (1) of this section and completion of any DRC, the agency will address in writing each written objection raised by the entity.

(4) The agency may terminate the dispute resolution process and issue a final audit report or notice of improper payment if the entity fails to timely object under subsection (1) of this section.

NEW SECTION

WAC 182-502A-0901 Program integrity activity—Adjudicative proceedings. (1) If an entity objects to any report or notice assessing an overpayment, the entity may request an adjudicative proceeding by following the procedure set out in RCW 41.05A.170.

(2) At the adjudicative proceeding, the entity bears the burden of proving by a preponderance of the evidence that it has complied with applicable laws, rules, regulations, and agreements.

(3) The adjudicative proceeding is governed by chapter 34.05 RCW and chapter 182-526 WAC.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-502A-0100	Purpose.
WAC 182-502A-0200	Definitions.
WAC 182-502A-0300	Authority to audit.
WAC 182-502A-0400	Audit objectives.
WAC 182-502A-0500	Audit methods and locations.
WAC 182-502A-0600	Notification of on-site audits.
WAC 182-502A-0700	Audit overview.
WAC 182-502A-0800	Auditing process.
WAC 182-502A-0900	Audit sampling, extrapolation, and claim-by-claim review.
WAC 182-502A-1000	Provider audit—Draft report.
WAC 182-502A-1100	Provider audit—Dispute process.
WAC 182-502A-1200	Provider audit—Final report/appeal.
WAC 182-502A-1300	Audit outcomes.

WSR 14-21-138
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed October 21, 2014, 8:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-121 on August 20, 2014.

Title of Rule and Other Identifying Information: WAC 220-130-040 Review and selection process, this WAC details the application requirements and selection process for volunteer groups applying for a cooperative fish and wildlife project.

Hearing Location(s): Capital Events Center, 605 Tyee Drive S.W., Tumwater, WA 98512, on December 12-13, 2014, at 8:30 a.m.

Date of Intended Adoption: On or after January 2, 2014 [2015].

Submit Written Comments to: Joanna Eide, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by December 5, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by November 26, 2014, TTY 1-800-833-6388, or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend WAC language so Washington department of fish and wildlife (WDFW) aquatic lands enhancement account (ALEA) grants may be offered once per biennium, rather than annually. This rule change will not affect the underlying process or funding and it primarily [is] a technical change to promote efficiency in the grant process.

Reasons Supporting Proposal: Conducting an annual application, review and selection process requires significant staff time. Amending department rule to offer grants once per biennium and conduct the process once per biennium will result in significant savings of staff time. The department estimates this change will result in a savings of $3,950; the annual subscription cost of Fluidreview, the department's online application, review and scoring system for ALEA grants. This change does not affect the amount of grant funds that will be available to award to ALEA grant recipients.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, 77.100.060, and 77.100.080.

Statute Being Implemented: RCW 77.04.012, 77.12.047, 77.100.060, and 77.100.080.

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: Additional information about the public hearing and the December fish and wildlife commission meeting is available at http://wdfw.wa.gov/commission/meetings.html.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Josh Nicholas, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2685.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal will not impose costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not affect hydraulics.

October 21, 2014
Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-22-097, filed 11/6/07, effective 12/7/07)

WAC 220-130-040 Review and selection process. (1) The application method is on application forms provided by the department specifically for this purpose. Application forms will be available by request from the Olympia headquarters and at all regional offices of the department.

(2) Applications for projects will be accepted ((~~each year~~)) at least once per biennium during the open application period of December 1 through February 28.

(a) Applications accepted prior to the start of a biennium may be for project funding for one or both years of the ensuing biennium.

(b) If applications are accepted ((~~during the first year of a~~)) after the start of the biennium, they will be for project funding in the second year of a biennium.

(3) The funding decision deadline is May 31 of the year of application.

(4) Exceptions to the funding deadline dates will only be allowed in the event of applications for volunteer projects which are responsive to an emergency situation which may arise and which has been declared to be an emergency by the director.

(5) The department will send each applicant, within forty-five days of receipt of each application, a written acknowledgment of the receipt of the application and give the applicant an estimated date when notification of acceptance or rejection of the proposal can be expected. The written acknowledgment will also provide the department's selection criteria and a general description of the review and selection process. Final decisions and notification of acceptance or rejection of proposals where funding is requested will be made only after the biennial budget is passed by the legislature and signed by the governor.

(6) The department will determine when a proposed project might affect the management programs of federal, other state, and local agencies and of treaty tribes and will make contact with these entities, when the department determines that it is appropriate to do so, during the review and selection process. If the department determines that ongoing coordination between a volunteer group and another agency or tribe would be appropriate, it may be required as a condition of the agreement, when issued.

(7) The department may provide suggested modifications to the proposal which would increase its likelihood of approval together with the name and telephone number of the person within the department responsible for monitoring the review of the proposal.

WSR 14-21-140
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING
[Filed October 21, 2014, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-137.

Title of Rule and Other Identifying Information: WAC 170-290-0001 Purpose and intent, providing that working connections child care (WCCC) administered through the early childhood education and assistance program (ECEAP) shall follow ECEAP performance standards and contracts.

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on November 26, 2014, at 2:30 p.m.

Date of Intended Adoption: Not earlier than November 26, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 725-4925, by November 26, 2014.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by November 12, 2014, (360) 725-4523.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To allow DEL to serve up to twenty percent of the WCCC households in full-day preschool through contracted slots by contracting with ECEAP providers as authorized by the 2014 supplemental budget. Also, to specify that no provision [of] the affected section shall be interpreted contrary to RCW 43.215.250.

Reasons Supporting Proposal: DEL is expanding ECEAP. ECEAP expansion slots will be prioritized for full day services made possible by braiding ECEAP funding with WCCC funding, the combined funds issued in single contracts to ECEAP contractors. Language is needed in chapter 170-290 WAC distinguishing the legal framework of WCCC administered through ECEAP contracts and the framework of those administered by DSHS through vouchers.

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

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Matt Judge, Subsidy Policy Supervisor, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1999; Implementation and Enforcement: DEL licensing offices, statewide.

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

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

October 21, 2014
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0001 Purpose and intent. (1) This chapter establishes the requirements for eligible families to receive subsidized child care through the working connections child care (WCCC) and seasonal child care (SCC) programs as administered by DSHS under applicable state and federal law, to the extent of available funds. WCCC administered through the early childhood education and assistance program (ECEAP) shall follow ECEAP performance standards and contracts. As used in chapter 170-290 WAC, "to the extent of available funds" includes one or more of the following:

(a) Limiting or closing enrollment;

(b) Establishing a priority list for new enrollees subject to applicable state and federal law; or

(c) Creating and maintaining a waiting list.

(2) The purpose of WCCC, as provided in part II of this chapter, is to:

(a) Assist eligible families in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs; and

(b) Consider the health and safety of children while they are in care and receiving child care subsidies.

(3) The purpose of SCC, as provided in part III of this chapter, is to:

(a) Assist eligible families who are seasonally employed in agriculturally related work to pay for licensed child care; and

(b) Consider the health and safety of children while they are in care and receiving child care subsidies.

(4) No provision of this section shall be interpreted contrary to RCW 43.215.250.

WSR 14-21-145
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed October 21, 2014, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-036.

Title of Rule and Other Identifying Information: WAC 182-550-4900 Disproportionate share hospital (DSH) payments—General provisions and 182-550-4940 Disproportionate share hospital independent audit findings and recoupment process.

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://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on November 25, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than November 26, 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, fax (360) 586-9727, by 5:00 p.m. on November 25, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by November 17, 2014, TTY (800) 848-5429, or (360) 725-1307, or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Beginning with the audit of SFY 2011 DSH payments, independent audit findings demonstrating that DSH payments made to a hospital in that year exceeded the documented hospital-specific cost limits, are considered a discovery of an overpayment under 42 C.F.R. Part 433, Subpart F. The agency is establishing rules regarding recoupment of the overpayment and to allow for redistribution of the DSH overpayments in accordance with the agency's state plan.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 42 C.F.R. Part 455, Subpart F.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Barcus, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Mary O'Hare, P.O. Box 45500, Olympia, WA 98504-5500, (360) 725-9820.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

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

October 21, 2014
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-08-038, filed 3/26/14, effective 4/26/14)

WAC 182-550-4900 Disproportionate share hospital (DSH) payments—General provisions. (1) As required by Section 1902 (a)(13)(A) of the Social Security Act (42 U.S.C. 1396 (a)(13)(A)) and RCW 74.09.730, the medicaid agency makes payment adjustments to eligible hospitals that serve a disproportionate number of low-income clients with special needs. These adjustments are also known as disproportionate share hospital (DSH) payments.

(2) No hospital has a legal entitlement to any DSH payment. A hospital may receive DSH payments only if:

(a) It satisfies the requirements of 42 U.S.C. 1396r-4;

(b) It satisfies all the requirements of agency rules and policies; and

(c) The legislature appropriates sufficient funds.

(3) For purposes of eligibility for DSH payments, the following definitions apply:

(a) "Base year" means the twelve-month medicare cost report year that ended during the calendar year immediately preceding the year in which the state fiscal year (SFY) for which the DSH application is being made begins.

(b) "Case mix index (CMI)" means the average of diagnosis related group (DRG) weights for all of an individual hospital's DRG-paid medicaid claims during the SFY two years prior to the SFY for which the DSH application is being made.

(c) "Charity care" means necessary hospital care rendered to persons unable to pay for the hospital services or unable to pay the deductibles or coinsurance amounts required by a third-party payer. The charity care amount is determined in accordance with the hospital's published charity care policy.

(d) "DSH reporting data file (DRDF)" means the information submitted by hospitals to the agency which the agency uses to verify medicaid client eligibility and applicable inpatient days.

(e) "Hospital-specific DSH cap" means the maximum amount of DSH payments a hospital may receive from the agency during a SFY. If a hospital does not qualify for DSH, the agency will not calculate the hospital-specific DSH cap and the hospital will not receive DSH payments.

(f) "Inpatient medicaid days" means inpatient days attributed to clients eligible for Title XIX medicaid programs. Excluded from this count are inpatient days attributed to clients eligible for state administered programs, medicare Part A, Title XXI, the refugee program and the TAKE CHARGE program.

(g) "Low income utilization rate (LIUR)" means the sum of the following two percentages used to determine whether a hospital is DSH-eligible:

(i) The ratio of payments received by the hospital for patient services provided to clients under medicaid (including managed care), plus cash subsidies received by the hospital from state and local governments for patient services, divided by total payments received by the hospital from all patient categories; plus

(ii) The ratio of inpatient charity care charges less inpatient cash subsidies received by the hospital from state and local governments, less contractual allowances and discounts, divided by total charges for inpatient services.

(h) "Medicaid inpatient utilization rate (MIPUR)" ((~~is calculated as a fraction~~)) means the calculation (expressed as a percentage)((~~,~~)) used to determine whether a hospital is DSH-eligible. The numerator of which is the hospital's number of inpatient days attributable to clients who (for such days) were eligible for medical assistance during the base year (regardless of whether such clients received medical assistance on a fee-for-service basis or through a managed care entity), and the denominator of which is the total number of the hospital's inpatient days in that period. "Inpatient days" include each day in which a person (including a newborn) is an inpatient in the hospital, whether or not the person is in a specialized ward and whether or not the person remains in the hospital for lack of suitable placement elsewhere.

(i) "Medicare cost report year" means the twelve-month period included in the annual cost report a medicare-certified hospital or institutional provider is required by law to submit to its fiscal intermediary.

(j) "Nonrural hospital" means a hospital that:

(i) Is not participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC 182-550-4650;

(ii) Is not designated as an "institution for mental diseases (IMD)" as defined in WAC 182-550-2600 (2)(d);

(iii) Is not a small rural hospital as defined in (n) of this subsection; and

(iv) Is located in the state of Washington or in a designated bordering city. For DSH purposes, the agency considers as nonrural any hospital located in a designated bordering city.

(k) "Obstetric services" means routine, nonemergency obstetric services and the delivery of babies.

(l) "Service year" means the one year period used to measure the costs and associated charges for hospital services. The service year may refer to a hospital's fiscal year or medicare cost report year, or to a state fiscal year.

(m) "Statewide disproportionate share hospital (DSH) cap" ((~~is~~)) means the maximum amount per SFY that the state can distribute in DSH payments to all qualifying hospitals during a SFY.

(n) "Small rural hospital" means a hospital that:

(i) Is not participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC 182-550-4650;

(ii) Is not designated as an "institution for mental diseases (IMD)" as defined in WAC 182-550-2600 (2)(d);

(iii) Has fewer than seventy-five acute beds;

(iv) Is located in the state of Washington; and

(v) Is located in a city or town with a nonstudent population of no more than seventeen thousand eight hundred six in calendar year 2008, as determined by population data reported by the Washington state office of financial management population of cities, towns and counties used for the allocation of state revenues. This nonstudent population is used for SFY 2010, which begins July 1, 2009. For each subsequent SFY, the nonstudent population is increased by two percent.

(o) "Uninsured patient" ((~~is~~)) means a person without creditable coverage as defined in 45 C.F.R. 146.113. (An "insured patient," for DSH program purposes, is a person with creditable coverage, even if the insurer did not pay the full charges for the service.) To determine whether a service provided to an uninsured patient may be included for DSH application and calculation purposes, the agency considers only services that would have been covered and paid through the agency's fee-for-service process.

(4) To be considered for a DSH payment for each SFY, a hospital must meet the criteria in this section:

(a) DSH application requirements.

(i) Only a hospital located in the state of Washington or in a designated bordering city is eligible to apply for and receive DSH payments. An institution for mental disease

(IMD) owned and operated by the state of Washington is exempt from the DSH application requirement.

(ii) A hospital that meets DSH program criteria is eligible for DSH payments in any SFY only if the agency receives the hospital's DSH application by the deadline posted on the agency's web site.

(b) The DSH application review and correction period.

(i) This subsection applies only to DSH applications that meet the requirements under (a) of this subsection.

(ii) The agency reviews and may verify any information provided by the hospital on a DSH application. However, each hospital has the responsibility for ensuring its DSH application is complete and accurate.

(iii) If the agency finds that a hospital's application is incomplete or contains incorrect information, the agency will notify the hospital. The hospital must ((~~resubmit~~)) submit a new, corrected application. The agency must receive the new DSH application from the hospital by the deadline for corrected DSH applications posted on the agency's web site.

(iv) If a hospital finds that its application is incomplete or contains incorrect information, it may choose to submit changes and/or corrections to the DSH application. The agency must receive the corrected, complete, and signed DSH application from the hospital by the deadline for corrected DSH applications posted on the agency's web site.

(c) Official DSH application.

(i) The agency considers as official the last signed DSH application submitted by the hospital as of the deadline for corrected DSH applications. A hospital cannot change its official DSH application. Only those hospitals with an official DSH application are eligible for DSH payments.

(ii) If the agency finds that a hospital's official DSH application is incomplete or contains inaccurate information that affects the hospital's LIDSH payment(s), the hospital does not qualify for, will not receive, and cannot retain, LIDSH payment(s). Refer to WAC 182-550-5000.

(5) A hospital is a disproportionate share hospital for a specific SFY if the hospital satisfies the medicaid inpatient utilization rate (MIPUR) requirement (discussed in (a) of this subsection), and the obstetric services requirement (discussed in (b) of this subsection).

(a) The hospital must have a MIPUR of one percent or more; and

(b) Unless one of the exceptions described in (i)(A) or (B) of this subsection applies, the hospital must have at least two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to eligible individuals.

(i) The obstetric services requirement does not apply to a hospital that:

(A) Provides inpatient services predominantly to individuals younger than age eighteen; or

(B) Did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted.

(ii) For hospitals located in rural areas, "obstetrician" means any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(6) To determine a hospital's MIPUR, the agency uses inpatient days as follows:

(a) The total inpatient days on the official DSH application if this number is greater than the total inpatient hospital days on the medicare cost report; and

(b) The MMIS medicaid days as determined by the DSH reporting data file (DRDF) process if the Washington state medicaid days on the official DSH application do not match the eligible days on the final DRDF. If the hospital did not submit a DRDF, the agency uses paid medicaid days from MMIS.

(7) The agency administers the following DSH programs (depending on legislative budget appropriations):

(a) Low income disproportionate share hospital (LIDSH);

(b) Medical care services disproportionate share hospital (MCSDSH);

(c) Small rural disproportionate share hospital (SRDSH);

(d) Small rural indigent assistance disproportionate share hospital (SRIADSH);

(e) Nonrural indigent assistance disproportionate share hospital (NRIADSH);

(f) Public hospital disproportionate share hospital (PHDSH);

(g) Children's health program disproportionate share hospital (CHPDSH); and

(h) Sole community disproportionate share hospital (SCDSH).

(8) The agency allows a hospital to receive any one or all of the DSH payment it qualifies for, up to the individual hospital's DSH cap (see subsection (10) of this section) and provided that total DSH payments do not exceed the statewide DSH cap. To be eligible for payment under multiple DSH programs, a hospital must meet:

(a) The basic requirements in subsection (5) of this section; and

(b) The eligibility requirements for the particular DSH payment, as discussed in the applicable DSH program WAC.

(9) For each SFY, the agency calculates DSH payments for each DSH program for eligible hospitals using data from each hospital's base year. The agency does not use base year data for MCSDSH and CHPDSH payments, which are calculated based on specific claims data.

(10) The agency's total DSH payments to a hospital for any given SFY cannot exceed the hospital-specific DSH cap for that SFY. Except for critical access hospitals (CAHs), the agency determines a hospital's DSH cap as follows. The agency:

(a) Uses the overall ratio of costs-to-charges (RCC) to determine costs for:

(i) Medicaid services, including medicaid services provided under managed care organization (MCO) plans; and

(ii) Uninsured charges; then

(b) Subtracts all payments related to the costs derived in (a) of this subsection; then

(c) Makes any adjustments required and/or authorized by federal statute or regulation.

(11) A CAH's DSH cap is based strictly on the cost to the hospital of providing services to medicaid clients served under MCO plans, and uninsured patients. To determine a CAH's DSH cap amount, the agency:

(a) Uses the overall RCC to determine costs for:

(i) Medicaid services provided under MCO plans; and

(ii) Uninsured charges; then

(b) Subtracts the total payments made by, or on behalf of, the medicaid clients serviced under MCO plans, and uninsured patients.

(12) In any given federal fiscal year, the total of the agency's DSH payments cannot exceed the statewide DSH cap as published in the federal register.

(13) If the agency's DSH payments for any given federal fiscal year exceed the statewide DSH cap, the agency will adjust DSH payments to each hospital to account for the amount overpaid. The agency makes adjustments in the following program order:

(a) PHDSH;

(b) SRIADSH;

(c) SRDSH;

(d) SCDSH;

(e) NRIADSH;

(f) MCSDSH;

(g) CHPDSH; and

(h) LIDSH.

(14) If the statewide DSH cap is exceeded, the agency will recoup DSH payments made under the various DSH programs, in the order of precedence described in subsection (13) of this section, starting with PHDSH, until the amount exceeding the statewide DSH cap is reduced to zero. See specific program regulations in the Washington Administrative Code for description of how amounts to be recouped are determined.

(15) The total amount the agency may distribute annually under a particular DSH program is capped by legislative appropriation. Any changes in payment amount to a hospital in a particular DSH program means a redistribution of payments within that DSH program. When necessary, the agency will recoup from hospitals to make additional payments to other DSH-eligible hospitals within that DSH program.

(16) If funds in a specific DSH program need to be redistributed because of legislative, administrative, or other state action, only those hospitals eligible for that DSH program will be involved in the redistribution.

(a) If an individual hospital has been overpaid by a specified amount, the agency will recoup that overpayment amount from the hospital and redistribute it among the other eligible hospitals in the DSH program. The additional DSH payment to be given to each of the other hospitals from the recouped amount is proportional to each hospital's share of the particular DSH program.

(b) If an individual hospital has been underpaid by a specified amount, the agency will pay that hospital the additional amount owed by recouping from the other hospitals in the DSH program. The amount to be recouped from each of the other hospitals is proportional to each hospital's share of the particular DSH program.

(c) This subsection does not apply to the DSH independent audit findings and recoupment process described in WAC 182-550-4940.

(17) All information related to a hospital's DSH application is subject to audit by the agency or its designee. The agency determines the extent and timing of the audits. For example, the agency or its designee may choose to do ((~~a desk review~~)) an audit of an individual hospital's DSH application and/or supporting documentation, or audit all hospitals that qualified for a particular DSH program after payments have been distributed under that program.

(18) If a hospital's submission of incorrect information or failure to submit correct information results in DSH overpayment to that hospital, the agency will recoup the overpayment amount((~~, in accordance with the provisions of~~)) as allowed in RCW 74.09.220 and ((~~43.20B.695~~)) chapter 41.05A RCW.

(19) DSH calculations use fiscal year data, and DSH payments are distributed based on funding for a specific SFY. Therefore, unless otherwise specified, changes and clarifications to DSH program rules apply for the full SFY in which the rules are adopted.

NEW SECTION

WAC 182-550-4940 Disproportionate share hospital independent audit findings and recoupment process. (1) In order to comply with federal law and regulation (42 U.S.C. 1396r-4 (j)(2); 42 C.F.R. Part 455, Subpart D), the medicaid agency contracts with an independent auditor to conduct an annual, independent, certified audit of the agency's disproportionate share hospital (DSH) payments. Chapter 182-502A WAC is not applicable to the independent, certified audits described in this section.

(2) Hospitals must comply with the agency's or the auditor's requests for documentation. A hospital's failure to provide requested documentation may result in a finding that any or all of the DSH payments for the audited year are overpayments.

(3) Beginning in state fiscal year 2011, an audit finding that demonstrates DSH payments made to a hospital in that year exceeded the documented hospital-specific DSH cap (as defined in WAC 182-550-4900(3)), is considered a discovery of an overpayment under 42 C.F.R. Part 433, Subpart F.

(4) Hospitals must return overpayments to the agency for redistribution to qualifying hospitals. A qualifying hospital is defined as a disproportionate share hospital that has a positive hospital-specific DSH cap.

(5) The additional DSH payment to be given to each of the other qualifying hospitals from the recouped amount is proportional to each hospital's share of the particular DSH program. Only the recouped payments are redistributed among those eligible DSH hospitals that have a remaining positive hospital-specific DSH cap.

(6) The independent auditor will provide preliminary audit results to each hospital that received DSH payments, including a statement as to whether the hospital's payments did or did not exceed the hospital's DSH cap. Hospitals identified as receiving DSH payments exceeding their hospital-specific DSH cap may request additional information on the preliminary audit results. The agency must receive the hospital's request for the additional information on the preliminary audit results no later than the last working day in November of the year in which the audit is conducted.

(7) In response to a hospital's timely request under subsection (6) of this section, the independent auditor will pro-

vide the hospital with at least the following information specific to the requesting hospital:

(a) Calculation of the medicaid inpatient utilization rate (MIUR);

(b) Regular inpatient and outpatient medicaid fee for service basic rate payments;

(c) Supplemental/enhanced inpatient and outpatient medicaid payments;

(d) Total medicaid payments;

(e) Total cost of care;

(f) Total cost of care of the uninsured; and

(g) A provider data summary schedule (PDSS) to compare to the agency's report required by 42 C.F.R. Sec. 447.299, Subpart E.

(8) Under this section, a hospital may only dispute an overpayment. An overpayment hearing is held under WAC 182-502-0230.

WSR 14-21-150
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING

[Filed October 21, 2014, 12:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-046.

Title of Rule and Other Identifying Information: WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps, 170-290-0205 Daily child care rates—Licensed or certified family home child care providers, and 170-290-0240 Child care subsidy rates—In-home/relative providers.

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on November 25, 2014, at 2 p.m.

Date of Intended Adoption: Not earlier than November 25, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by November 25, 2014.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by November 18, 2014, (360) 407-1999.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase working connections and seasonal child care subsidy program base rates.

Reasons Supporting Proposal: The 2014 supplemental budget, chapter 221, Laws of 2014, provided for a four percent increase to the working connections and seasonal child care subsidy program base rates, effective January 1, 2015. Rule making is needed to implement these rate increases.

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

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Matt Judge, Subsidy Policy Supervisor, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1999; Implementation and Enforcement: DEL licensing offices, statewide.

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

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

October 21, 2014
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 14-20-088, filed 9/29/14, effective 10/30/14)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$((~~30.26~~))	$((~~25.45~~))	$((~~24.04~~))	$((~~22.64~~))
	Half-Day	31.47	26.47	25.00	23.55
		$((~~15.13~~))	$((~~12.73~~))	$((~~12.02~~))	$((~~11.32~~))
		15.74	13.24	12.50	11.78

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Spokane County	Full-Day	$((~~30.95~~))	$((~~26.03~~))	$((~~24.60~~))	$((~~23.16~~))
	Half-Day	32.19	27.07	25.58	24.09
		$((~~15.48~~))	$((~~13.02~~))	$((~~12.30~~))	$((~~11.58~~))
		16.10	13.54	12.79	12.05
Region 2	Full-Day	$((~~30.57~~))	$((~~25.51~~))	$((~~23.66~~))	$((~~20.92~~))
	Half-Day	31.79	26.53	24.61	21.76
		$((~~15.29~~))	$((~~12.76~~))	$((~~11.83~~))	$((~~10.46~~))
		15.90	13.27	12.31	10.88
Region 3	Full-Day	$((~~40.45~~))	$((~~33.73~~))	$((~~29.13~~))	$((~~28.29~~))
	Half-Day	42.07	35.08	30.30	29.42
		$((~~20.23~~))	$((~~16.87~~))	$((~~14.57~~))	$((~~14.15~~))
		21.04	17.54	15.15	14.71
Region 4	Full-Day	$((~~47.08~~))	$((~~39.31~~))	$((~~32.98~~))	$((~~29.70~~))
	Half-Day	48.96	40.88	34.30	30.89
		$((~~23.54~~))	$((~~19.66~~))	$((~~16.49~~))	$((~~14.85~~))
		24.48	20.44	17.15	15.45
Region 5	Full-Day	$((~~34.52~~))	$((~~29.70~~))	$((~~26.15~~))	$((~~23.21~~))
	Half-Day	35.90	30.89	27.20	24.14
		$((~~17.26~~))	$((~~14.85~~))	$((~~13.08~~))	$((~~11.61~~))
		17.95	15.45	13.60	12.07
Region 6	Full-Day	$((~~33.94~~))	$((~~29.13~~))	$((~~25.45~~))	$((~~24.89~~))
	Half-Day	35.30	30.30	26.47	25.89
		$((~~16.97~~))	$((~~14.57~~))	$((~~12.73~~))	$((~~12.45~~))
		17.65	15.15	13.24	12.95

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 14-20-088, filed 9/29/14, effective 10/30/14)

WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$((~~25.77~~))	$((~~25.77~~))	$((~~22.40~~))	$((~~22.40~~))	$((~~19.93~~))
	Half-Day	26.80	26.80	23.30	23.30	20.73
		$((~~12.89~~))	$((~~12.89~~))	$((~~11.20~~))	$((~~11.20~~))	$((~~9.97~~))
		13.40	13.40	11.65	11.65	10.37

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Spokane County	Full-Day	$((~~26.35~~))	$((~~26.35~~))	$((~~22.91~~))	$((~~22.91~~))	$((~~20.37~~))
	Half-Day	27.40	27.40	23.83	23.83	21.18
		$((~~13.18~~))	$((~~13.18~~))	$((~~11.46~~))	$((~~11.46~~))	$((~~10.19~~))
		13.70	13.70	11.92	11.92	10.59
Region 2	Full-Day	$((~~27.21~~))	$((~~27.21~~))	$((~~23.66~~))	$((~~21.16~~))	$((~~21.16~~))
	Half-Day	28.30	28.30	24.61	22.01	22.01
		$((~~13.61~~))	$((~~13.61~~))	$((~~11.83~~))	$((~~10.58~~))	$((~~10.58~~))
		14.15	14.15	12.31	11.01	11.01
Region 3	Full-Day	$((~~36.10~~))	$((~~36.10~~))	$((~~31.12~~))	$((~~27.38~~))	$((~~24.89~~))
	Half-Day	37.54	37.54	32.36	28.48	25.89
		$((~~18.05~~))	$((~~18.05~~))	$((~~15.56~~))	$((~~13.69~~))	$((~~12.45~~))
		18.77	18.77	16.18	14.24	12.95
Region 4	Full-Day	$((~~42.47~~))	$((~~42.47~~))	$((~~36.93~~))	$((~~31.12~~))	$((~~29.87~~))
	Half-Day	44.17	44.17	38.41	32.36	31.06
		$((~~21.24~~))	$((~~21.24~~))	$((~~18.47~~))	$((~~15.56~~))	$((~~14.94~~))
		22.09	22.09	19.21	16.18	15.53
Region 5	Full-Day	$((~~28.63~~))	$((~~28.63~~))	$((~~24.89~~))	$((~~23.66~~))	$((~~21.16~~))
	Half-Day	29.78	29.78	25.89	24.61	22.01
		$((~~14.32~~))	$((~~14.32~~))	$((~~12.45~~))	$((~~11.83~~))	$((~~10.58~~))
		14.89	14.89	12.95	12.31	11.01
Region 6	Full-Day	$((~~28.63~~))	$((~~28.63~~))	$((~~24.89~~))	$((~~24.89~~))	$((~~23.66~~))
	Half-Day	29.78	29.78	25.89	25.89	24.61
		$((~~14.32~~))	$((~~14.32~~))	$((~~12.45~~))	$((~~12.45~~))	$((~~11.83~~))
		14.89	14.89	12.95	12.95	12.31

(2) The family home child care WAC 170-296A-0010 and 170-296A-5550 allows providers to care for children from birth up to and including the day before their thirteenth birthday.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 14-20-088, filed 9/29/14, effective 10/30/14)

WAC 170-290-0240 Child care subsidy rates—In-home/relative providers. (1) **Base rate.** When a consumer employs an in-home/relative provider, DSHS pays the lesser of the following to an eligible in-home/relative provider for child care:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy rate of two dollars and ((~~thirty-three~~)) forty-two cents per hour for the child who needs the greatest number of hours of care and two dollars and ((~~thirty~~)) thirty-nine cents per hour for the care of each additional child in the family.

(2) DSHS may pay above the maximum hourly rate for children who have special needs under WAC 170-290-0235.

(3) DSHS makes the WCCC payment directly to a consumer's eligible provider.

(4) When applicable, DSHS pays the employer's share of the following:

(a) Social Security and medicare taxes (FICA) up to the wage limit;

(b) Federal Unemployment Taxes (FUTA); and

(c) State unemployment taxes (SUTA).

(5) If an in-home/relative provider receives less than the wage base limit per family in a calendar year, DSHS refunds all withheld taxes to the provider.

WSR 14-21-154
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed October 21, 2014, 2:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-103.

Title of Rule and Other Identifying Information: WAC 246-824-075 Continuing education requirements for dispensing opticians, amending the number of hours of continuing education that is reported each year of a three year reporting cycle.

Hearing Location(s): Department of Health, 111 Israel Road S.E., Room 145, Tumwater, WA 98501, on December 16, 2014, at 1:00 p.m.

Date of Intended Adoption: December 23, 2014.

Submit Written Comments to: Judy Haenke, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by December 16, 2015 [2014].

Assistance for Persons with Disabilities: Contact Judy Haenke by December 9, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, opticians report thirty hours of continuing education every three years. Fifteen hours must relate to contact lens education. The proposed rule will require a minimum of five hours of continuing education be earned each year, but opticians must still complete a total of thirty hours every three years. Fifteen of the total thirty hours of required continuing education must relate to contact lenses. The proposed rule also provides clarity in how opticians can obtain the required coursework.

Reasons Supporting Proposal: The department received a petition for rule making from the Opticians Association of Washington requesting that opticians complete ten hours of continuing education each year of the three year reporting cycle, with five of the ten hours relating to contact lens [lenses]. Input from stakeholders resulted in the current proposal of a minimum five hours each year of the three year reporting cycle but retaining the required thirty hours of every three years with fifteen of those hours related to contact lens [lenses]. The purpose is to keep licensed opticians current with developments in a rapidly changing field.

Statutory Authority for Adoption: RCW 18.34.120.

Statute Being Implemented: RCW 18.34.120.

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: Judy Haenke, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4947.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Judy Haenke, 111 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-4947, fax (360) 236-2901, e-mail judy.haenke@doh.wa.gov.

October 21, 2014
Dennis E. Worsham
Deputy Secretary
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 09-07-023, filed 3/6/09, effective 4/6/09)

WAC 246-824-075 Continuing education requirements for dispensing opticians. Purpose and scope. The purpose of ((~~these requirements~~)) continuing education is to ensure the continued high quality of services provided by ((~~the~~)) licensed dispensing opticians. Continuing education consists of ((~~educational activities designed to review existing concepts and techniques and conveys information and knowledge about advances~~)) programs of learning which contribute directly to the advancement or enhancement of skills in the field of opticianry, ((~~so as~~)) designed to keep the licensed dispensing opticians ((~~abreast~~)) informed of current and forecasted developments in a rapidly changing field.

(1) Basic requirements. Licensed dispensing opticians whose three-year continuing education reporting cycle begins on or after June 1, 2015, must complete thirty hours of continuing education every three years as required in chapter 246-12 WAC, Part 7. ((~~(2)~~)) Of the thirty hours every three years:

(a) A minimum of five hours must be completed in each of the three years;

(b) At least fifteen of the credit hours must relate to contact lenses.

(2) Approved continuing education courses may be completed through the following methods or activities:

(a) Attendance at a local state or national program;

(b) Self-study through distance learning;

(c) Electronically through webinar or video presentations.

(3) ((~~Qualification of program for continuing education credit.~~)) Courses offered by the following organizations ((~~and methods listed in this section will be~~)) are presumed to qualify as continuing education courses. The secretary reserves the ((~~authority~~)) right to refuse to accept credits in any course if the secretary determines that the course did not provide information sufficient in amount or relevancy to opticianry((~~. Qualifying organizations and methods for the purposes of this section shall include in-class training, correspondence courses, video and/or audio tapes offered by any of the following~~)):

(a) American Board of Opticianry;

(b) National Academy of Opticianry;

(c) Optical Laboratories Association;

(d) National Contact Lens Examiners;

(e) Contact Lens Society of America;

(f) Opticians Association of Washington;

(g) Joint Commission of Allied Health Personnel in Ophthalmology;

(h) Council on Optometric Practitioner Education;

(i) Opticianry colleges or universities approved by the secretary;

(j) Speakers sponsored by any of the above organizations;

(k) Any state or national opticianry association; and

(l) Additional qualifying organizations or associations as approved by the secretary.

WSR 14-21-156
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed October 21, 2014, 3:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-084.

Title of Rule and Other Identifying Information: Tax avoidance, this is a set of rules explaining tax avoidance transactions as authorized by RCW 82.32.655, 82.32.300, and 82.01.060.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 2, 2014, at 1:30 p.m. *Call-in option can be provided upon request no later than three days before the hearing date.* Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: December 9, 2014.

Submit Written Comments to: Melinda J. Mandell, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail MelindaM@dor.wa.gov, by December 2, 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: These rules are new. The department is considering four rules: One general rule and three separate rules for each of the three types of tax avoidance identified in RCW 82.32.655(3). These rules are needed to explain the implications of the legislation and to assist in determining whether a transaction or arrangement is within the scope of the three transaction/arrangement types identified in RCW 82.32.655(3).

Reasons Supporting Proposal: RCW 82.32.655(5).

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: RCW 82.32.655.

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: Melinda J. Mandell, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1584; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; 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. Not required.

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

October 21, 2014
Dylan Waits
Rules Coordinator

GENERAL RULE: TAX AVOIDANCE

NEW SECTION

WAC 458-20-280 Introduction. *This rule is organized into eight parts, as follows:*

- *Purpose and general scope*
- *Transactions or arrangements specifically identified as potential tax avoidance*
- *Relevant factors in transactions deemed unfair tax avoidance*
- *Economic positions of participants*
- *Substantial nontax reasons for entering into an arrangement*
- *Results of unfair tax avoidance transactions*
- *Tax periods affected*
- *Penalty provisions*

Other rules. There are three auxiliary rules that address the following three types of arrangements.

- *WAC 458-20-28001 Construction joint ventures and similar arrangements described in RCW 82.32.655 (3)(a);*
- *WAC 458-20-28002 Disguised income arrangements described in RCW 82.32.655 (3)(b); and*
- *WAC 458-20-28003 Sales and use tax avoidance arrangements described in RCW 82.32.655 (3)(c).*

(1) **Purpose and general scope.** Chapter 23, Laws of 2010 1st sp. sess., enacted as RCW 82.32.655 and 82.32.660, as well as amended RCW 82.32.090, to address unfair tax avoidance. Although taxpayers have the right to enter into arrangements or transactions that have lower tax consequences, the legislature recognized that certain arrangements and transactions are contrary to the intent of the taxation statutes. The legislation and this rule address certain identified arrangements and transactions that unfairly avoid taxes and prescribe specific remedial actions to be taken by the department in such cases. The legislation and this rule do not affect or apply to any other remedies available to the department by statute or common law, as these remedies are expressly preserved by the legislation.

(a) **Rule examples.** This rule includes a number of examples that identify a set of facts and then state a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority. An example that concludes an arrangement or transaction is not unfair tax avoidance under this rule does not mean that the taxpayer is entitled to any particular tax treatment or that the arrangement or transaction is approved by the department under other authority. It

may still be disregarded or disapproved by the department under other statutory or common law authority.

In addition, each fact pattern in each example is self-contained (i.e., "stands on its own") unless otherwise indicated by reference to another example. Examples concluding that sales tax applies to the transaction assume that no exclusions or exemptions apply, and the sale is sourced to Washington.

(b) **Definitions.**

(i) "Potential tax avoidance" and "identified transaction" both refer to an arrangement or transaction that has the potential to be unfair tax avoidance because it meets the elements of an arrangement or transaction described in subsection (2) of this rule.

(ii) "Unfair tax avoidance" means an arrangement or transaction that meets the elements of an arrangement or transaction described in subsection (2) of this rule, and that is also determined under all the facts and circumstances to be unfair tax avoidance based on the factors identified in subsection (3) of this rule.

(iii) "Affiliated" means under common control.

(iv) "Common control" means two or more entities controlled by the same person or entity.

(v) "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise. A person's power to cause the direction of management and policies includes power that is held by:

(A) Persons related to the taxpayer; and

(B) Persons with whom the taxpayer acts in concert to direct the management or policies of the entity.

(vi) "Related" includes:

(A) An entity's parent, owner, subsidiary, or affiliate under common control;

(B) An individual person's spouse, grandparent, parent, sibling, child, or grandchild; and

(C) In the case of a trust, the trust or a related person as defined in (A) or (B) of this subsection that:

(I) Has a beneficial interest in the trust;

(II) Has control over the trust or trust property; or

(III) Is the settlor and has retained significant control over the trust.

(vii) "Moving" or "moves" is any act or series of acts to ensure that income is received by a person who is not taxable in Washington on that income; and that the taxpayer or a related person receives substantially all the benefit of the income. Such acts may include without limitation: An assignment, transfer, lease, or license of income-producing assets; the sale of property or services at less than could be obtained in an arm's length transaction; and capital contributions and distributions from a capital account.

(viii) "Specific written instructions" means tax reporting instructions that specifically address an arrangement or transaction and specifically identify the taxpayer to whom the instructions apply. Specific written instructions may be provided as part of an audit, tax assessment, determination, closing agreement, or in response to a binding ruling request.

Specific written instructions will not be construed as revoked by operation of this rule or its statutory authority, but the department may revoke specific written instructions by written notice to the taxpayer.

(ix) "Person" or "company" has the same meaning as provided in RCW 82.04.030.

(2) **Transactions or arrangements specifically identified as potential tax avoidance:** Under RCW 82.32.655(3), the following arrangements or transactions are specifically identified as potential tax avoidance.

(a) **Certain construction ventures.** Arrangements that are, in form, a joint venture or similar arrangement between a construction contractor and the owner or developer of a construction project but that are, in substance, substantially guaranteed payments for the purchase of construction services and that are characterized by a failure of the parties' agreement to provide for the contractor to share substantial profits and bear significant risk of loss in the venture. See WAC 458-20-28001 for more information.

(b) **Redirecting income.** Arrangements through which a taxpayer attempts to avoid business and occupation tax by disguising income received, or otherwise avoiding tax on income from a person that is not affiliated with the taxpayer from business activities that would be taxable in Washington by moving that income to another entity that would not be taxable in Washington. See WAC 458-20-28002 for more information.

(c) **Property ownership by controlled entity.** Arrangements through which a taxpayer attempts to avoid retail sales or use tax by engaging in a transaction to disguise its purchase or use of tangible personal property by vesting legal title or other ownership interest in another entity over which the taxpayer exercises control in such a manner as to effectively retain control of the tangible personal property. See WAC 458-20-28003 for more information.

(3) **Factors in a specifically identified arrangement or transaction deemed unfair tax avoidance:** An arrangement or transaction identified in subsection (2) of this rule, is not "unfair tax avoidance" unless the arrangement or transaction is determined to be unfair tax avoidance under consideration of one or more of the factors in this subsection. These factors do not constitute a list of discrete elements that must be met for an arrangement or transaction to be unfair tax avoidance.

(a) Whether there has been a meaningful change in the economic positions of the participants in an arrangement or transaction, apart from its tax effects, when the arrangement is considered in its entirety;

(b) Whether substantial nontax reasons exist for entering into an arrangement or transaction;

(c) Whether an arrangement or transaction is a reasonable means of accomplishing a substantial nontax purpose;

(d) An entity's relative contributions to the work that generates income;

(e) The location where work is performed[1]; and

[1] For apportionable activities, see WAC 458-20-19401 through 458-20-19404.

(f) Other relevant factors.

(g) Application of factors:

(i) To the extent relevant, the department may consider any or all factors listed in this subsection as part of an analysis of whether an arrangement or transaction has sufficient substance to be respected for tax purposes. The department

may consider evidence of a taxpayer's actual subjective intent, but the department is not required to prove that tax avoidance was the subjective intent of any particular arrangement or transaction.

(ii) Right of rebuttal. If the department determines that the arrangement or transaction meets the elements identified in WAC 458-20-28001, 458-20-28002, or 458-20-28003 and that one or more of the factors identified in this subsection indicate unfair tax avoidance, the department presumes the arrangement or transaction is unfair tax avoidance. The taxpayer may rebut the presumption by proving that:

(A) The arrangement or transaction changes in a meaningful way, apart from its tax effects, the economic positions of the participants in the arrangement when considered as a whole; and

(B) One or more substantial nontax reasons were the taxpayer's primary reason for entering into the arrangement or transaction.

(4) **When does an arrangement or transaction change in a meaningful way, apart from its tax effects, the economic positions of the participants in the arrangement when considered as a whole?**

(a) **Whole transaction.** In evaluating any change to the economic positions of the participants, the department considers all facts and circumstances relevant to the individual economic position of each participant in the arrangement or transaction as a whole.

(b) **Meaningful change defined.** Meaningful change in economic position means, apart from its tax benefits, a bona fide and substantial increase in profit or profit potential or a bona fide and substantial reduction in costs or expenses between the form of the arrangement or transaction chosen by the taxpayer and the actual substance of the arrangement or transaction. The reasonably expected profit from the arrangement or transaction must be substantial when compared to the reasonably expected tax benefits that would be allowed if the arrangement or transaction is to be respected.

(c) **Shifting profits insufficient.** An arrangement or transaction that merely shifts income or value between related persons does not result in a meaningful change in economic position.

(5) **When do substantial nontax reasons or purposes exist for entering into an arrangement or transaction?**

(a) **Subjective purpose.** In evaluating whether a taxpayer had a substantial nontax reason or purpose for an arrangement or transaction, the department will consider all facts and circumstances that are relevant to determining the taxpayer's subjective intent. However, the department is not required to prove that tax avoidance was the subjective intent of any particular arrangement or transaction, but may presume such intent from the presence of other relevant factors.

(b) **Substantial nontax reason defined.** A substantial nontax reason is a bona fide nontax reason that is a substantial motivating factor to the taxpayer's decision to enter into the arrangement or transaction in this state. A bona fide nontax reason may include the purpose of obtaining tax benefits from another government, provided the benefits are not the same type, kind, or nature of any substantial Washington state tax benefit obtained under the arrangement or transaction.

(c) **Partial safe harbor.** For purposes of applying this rule, the department will treat a stated nontax purpose as a bona fide reason where all participants in an arrangement or transaction are substantive operating businesses, adequately capitalized, and carrying on substantial business activities using their own property or employees. For purposes of applying common law or statutory remedies other than under RCW 82.32.655, the department may treat stated nontax reasons as other than bona fide, if appropriate under all facts and circumstances.

(6) **Results of an unfair tax avoidance transaction:**

(a) **Determination of proper amount of tax.** For tax benefits received on or after January 1, 2006, the department must disregard the form of an unfair tax avoidance arrangement or transaction and determine the amount of tax based on the actual substance of the arrangement or transaction, except as provided in subsection (7) of this rule.

(b) **Amount of tax benefit defined.** The tax benefit of an unfair tax avoidance arrangement or transaction is the difference between the amount of tax due based on the actual substance of the arrangement or transaction and the amount of tax actually paid by the taxpayer based on the form of the arrangement or transaction. In determining the amount of the tax benefit, the department will credit the tax previously paid by the taxpayer against total tax assessed on the revised transaction in accordance with customary department practice.

(c) **Actual substance.** The actual substance of an unfair tax avoidance arrangement or transaction is:

(i) For transactions or arrangements described in subsection (2)(a) of this rule and WAC 458-20-28001, a sale of construction services from the construction contractor to the developer or owner.

(ii) For transactions or arrangements described in subsection (2)(b) of this rule and WAC 458-20-28002, a sale of property or services by a person subject to Washington taxes on the arrangement or transaction.

(iii) For transactions or arrangements described in subsection (2)(c) of this rule and WAC 458-20-28003, direct ownership of the tangible personal property by the user.

(7) **Tax periods affected:** The legislation addressed in this rule applies to tax benefits received on or after January 1, 2006. The legislation also contains exceptions to an application based on when an arrangement or transaction is initiated. The relationship between when the tax benefit is received and when the arrangement or transaction is initiated is explained as follows:

(a) **When is an arrangement or transaction initiated?** An arrangement or transaction is initiated when the first tax benefits are received.

(b) **When are tax benefits received?** For purposes of this rule, the timing of receipt of tax benefits is not dependent on the date on which the tax return is required to be filed, but instead:

(i) Business and occupation tax benefits are received on the date that, in the absence of tax avoidance, the taxpayer would have been subject to B&O tax under RCW 82.04.220.

(ii) Retail sales tax benefits are received on the date of the retail sale; and

(iii) Use tax benefits are received on the date of first use in Washington.

(c) **Tax benefits received January 1, 2006, through April 30, 2010.** The department will not deny tax benefits received by a taxpayer during this period if any of the following are true:

(i) The taxpayer reported its tax liability in conformance with unrevoked specific written instructions issued to that taxpayer or a person affiliated with the taxpayer as defined under subsection (1)(b)(iii), and the taxpayer's arrangement or transaction does not differ materially from that addressed in the specific written instructions.

(ii) The taxpayer reported its tax liability in conformance with a determination or other document made available by the department to the general public that specifically identifies and clearly approves the arrangement or transaction, and the taxpayer's arrangement or transaction does not differ materially from that addressed in the determination or document.

(iii) The department has completed a field audit of the taxpayer and the arrangement or transaction is covered by the audit. An arrangement or transaction is covered by an audit if the audit covered the same tax type (e.g., sales, use, business and occupation) as the tax benefit obtained by the taxpayer from the arrangement or transaction. An audit is complete when closed by the department.

(d) **Arrangement or transaction initiated *before* May 1, 2010, and tax benefits received after April 30, 2010.** The department will not deny tax benefits received by the taxpayer on or after May 1, 2010, if either of the following is true:

(i) The taxpayer has reported its tax liability in conformance with unrevoked specific written instructions issued to that taxpayer or a person affiliated with the taxpayer as defined under subsection (1)(b)(iii) of this rule, and the taxpayer's arrangement or transaction does not differ materially from that addressed in the specific written instructions.

(ii) The taxpayer has reported its tax liability in conformance with a determination or other document made available by the department to the general public that specifically identifies and clearly approves the arrangement or transaction, and the taxpayer's arrangement or transaction does not differ materially from that addressed in the determination or document.

(e) **Arrangement or transaction initiated *on or after* May 1, 2010.** For arrangements and transactions initiated on or after May 1, 2010, the department will not deny tax benefits received by the taxpayer if the taxpayer reports its tax liability in conformance with unrevoked specific written instructions issued to that taxpayer, and the taxpayer's arrangement or transaction does not materially differ from that addressed in the specific written instructions. Specific written instructions for this purpose do not include instructions provided to any other person. Further, taxpayers may not rely on any determination or other document made available by the department to the general public prior to May 1, 2010, to the extent inconsistent with this rule.

(f) **When do transactions or arrangements materially differ from those addressed in written guidance?** An arrangement or transaction materially differs from that addressed in written guidance when there is a material change in the form or substance of the arrangement or transaction, including without limitation, when there is a change of any participant identified in specific written instructions.

Example 1. A taxpayer identifying itself obtains a letter ruling from the department that specifically identifies an arrangement that constitutes unfair tax avoidance under this rule. In its letter ruling, the department approves the arrangement as presented and does not rule that the arrangement must be disregarded or the tax benefits denied. The taxpayer's arrangement does not materially differ at any point in time from the arrangement addressed in the letter ruling, and the taxpayer reports its tax liability in accordance with the letter ruling. The department will not disregard the arrangement or deny the resulting tax benefits for that taxpayer for any tax period, unless and until the letter ruling is expressly revoked.

Example 2. Assume the same facts as Example 1, but the letter ruling was sought by and issued to a person affiliated with the taxpayer as defined under subsection (1)(b)(iii) of this rule. If the arrangement was initiated and started to generate tax benefits prior to May 1, 2010, the department will not disregard the arrangement or deny the resulting tax benefits for that taxpayer for any tax period, unless and until the letter ruling is expressly revoked.

Example 3. Assume the same facts as Example 1, but the letter ruling was not sought by or issued to either the taxpayer or an affiliate. Assume that the arrangement or transaction is not addressed in any published guidance made available to the public by the department. The department must disregard the arrangement and deny the tax benefits received on or after January 1, 2006.

Example 4. The department conducts a field audit of a taxpayer for the period January 1, 2004, through December 31, 2008. The taxpayer has engaged in an arrangement that constitutes unfair tax avoidance under this rule. The arrangement was initiated January 1, 2004. The audit is completed prior to May 1, 2010. In specific written instructions, the audit expressly approves the arrangement. The taxpayer's arrangement does not materially differ at any point in time from the arrangement addressed in the audit instructions, and the taxpayer reports its tax liability in accordance with the those instructions. The department will not disregard the form of the arrangement or deny the tax benefits received for any tax period, unless and until the audit instructions are expressly revoked.

Example 5. Assume the same facts as Example 4, but the audit does not expressly approve the arrangement. Although the audit covers the same tax type as the benefits received under the arrangement, the arrangement is not specifically addressed in the audit's written reporting instructions. The taxpayer's arrangement does not differ at any point in time from the arrangement engaged in during the audit. Also assume that the arrangement or transaction is not addressed in any other published guidance made available by the department to the public.

• The department will not disregard the form of the arrangement or deny the tax benefits received through December 31, 2008, because the period is included in a completed field audit and is wholly included in the period prior to May 1, 2010.

• The department must disregard the form of the arrangement and deny tax benefits received after December 31,

2008, and prior to May 1, 2010, because the period is not included in a completed field audit.

(8) **Unfair tax avoidance penalty.**

(a) **Penalty imposed.** Except as otherwise stated in this rule, the department must assess a penalty of thirty-five percent on the amount of the tax benefit denied because of the disregard of an unfair tax avoidance arrangement or transaction.

(i) **When the unfair tax avoidance penalty applies.** The thirty-five percent assessment penalty applies to the tax benefits from engaging in unfair tax avoidance and received on or after May 1, 2010, and denied under this rule.

(ii) **Penalty safe harbor.** The department will not apply the tax avoidance penalty if the taxpayer discloses its participation in the tax avoidance arrangement or transaction to the department before the department provides notice of an investigation or audit of any kind or otherwise discovers the taxpayer's participation.

(iii) **Disclosure requirements.** The disclosure must be in writing, it must identify the taxpayer, and it must either request a ruling on the specific arrangement or transaction, or it must provide sufficient information to allow the department to reasonably determine whether the arrangement or transaction is unfair tax avoidance. Disclosure under this subsection applies only to the specific arrangement or transaction addressed in the disclosure. The disclosure no longer qualifies for the safe harbor upon any material change to the arrangement or transaction, including a change in participants.

(b) **Discovery.** The department discovers a taxpayer's participation in an unfair tax avoidance arrangement when the department obtains any evidence of the participation from any source.

(c) **Notice.** The department provides notice of an investigation or audit when it provides either oral or written notice to the taxpayer of the investigation or audit, regardless of whether the audit covers the same tax type (e.g., retail sales, use, business and occupation) as the tax benefit obtained from the unfair tax avoidance arrangement or transaction.

(d) **Audits.** Taxpayers subject to an investigation or audit that was open as of May 1, 2010, shall be deemed to have provided disclosure to the department that satisfies the requirements of (a)(ii) of this subsection with respect to any arrangement or transaction initiated prior to May 1, 2010, that results in a tax benefit of the same type (e.g., retail sales, use, business and occupation) as covered in the open investigation or audit. If the department fails to discover the taxpayer's participation in a tax avoidance arrangement or transaction during an investigation or audit closed after May 1, 2010, the taxpayer may still apply for the safe harbor for future periods by disclosure in accordance with the requirements of (a)(ii) of this subsection.

Example 6. On or after May 1, 2010, a taxpayer identifying itself requests a letter ruling on its participation in an arrangement that constitutes unfair tax avoidance under this rule. The taxpayer specifically requests that the department determine whether the arrangement is an identified transaction or unfair tax avoidance and provides all information requested by the department. As of the date the letter ruling request is received by the department, the department had not discovered the taxpayer's participation in the arrangement and had not notified the taxpayer of its intention to investigate or audit. If the department subsequently disregards the arrangement and denies the tax benefits, the department will not apply the thirty-five percent avoidance penalty to any denied tax benefit.

Example 7. Assume the same facts as in Example 6, but the taxpayer does not specifically request that the department determine whether the arrangement is an identified transaction or unfair tax avoidance. However, in the ruling request, the taxpayer provides sufficient information for the department to reasonably determine whether the arrangement is an identified transaction or unfair tax avoidance. If the department subsequently disregards the arrangement and denies the tax benefits, the department will not apply the thirty-five percent avoidance penalty to any denied tax benefit.

Example 8. Assume the same facts as Example 7, but the taxpayer only requests a ruling on specific elements related to the tax avoidance arrangement, not the arrangement as a whole. The ruling request therefore does not contain information sufficient for the department to reasonably determine whether the arrangement is an identified transaction or unfair tax avoidance. If the department subsequently disregards the arrangement and denies the tax benefits, the department must apply the thirty-five percent avoidance penalty to any denied tax benefit.

Example 9. A taxpayer engages in an arrangement or transaction from January 1, 2005, through December 31, 2010. Assume the arrangement constitutes an unfair tax avoidance arrangement under this rule. The taxpayer does not disclose the arrangement to the department in conformance with (a)(ii) of this subsection. If the department subsequently disregards the arrangement and denies the tax benefits, it must do so back to January 1, 2006, subject to the statute of limitations. The department must also apply the thirty-five percent avoidance penalty, but only to the portion of the assessment that results from tax benefits received on or after May 1, 2010, and denied under this rule.

Example 10. A construction contractor forms a joint venture with a developer. The venture was initiated, wound up its business, and was dissolved on April 1, 2010. Assume the joint venture constituted an unfair tax avoidance arrangement under this rule. Also assume that the venture has never been audited and did not report its tax liability in conformance with specific written instructions, or any other written authority that specifically identifies and clearly approves the arrangement. If the department subsequently disregards the arrangement and denies the tax benefits, it must do so back to January 1, 2006. The department will not assess the thirty-five percent avoidance penalty, however, because no tax benefits were received on or after May 1, 2010.

Example 11. Assume the same facts as Example 5, for tax benefits received on or after May 1, 2010, the department must disregard the form of the arrangement and deny the tax benefits received. In addition, the department must assess the thirty-five percent tax avoidance penalty unless the taxpayer discloses its participation in the arrangement in accordance with this rule.

For further information refer to WAC 458-20-28001, 458-20-28002, and 458-20-28003.

NEW SECTION

WAC 458-20-28001 Construction joint ventures and similar arrangements described in RCW 82.32.655 (3)(a). (1) **Preface.** This rule includes a number of examples that identify a set of facts and then state a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority. An example that concludes an arrangement or transaction is not unfair tax avoidance under this rule does not mean that the arrangement or transaction is approved by the department under other authority.

The tax consequences of all situations must be determined after a review of all facts and circumstances. Additionally, each fact pattern in each example is self-contained (e.g., "stands on its own") unless otherwise indicated by reference to another example. Examples concluding that sales tax applies to the transaction assume that no exclusions or exemptions apply, and the sale is sourced to Washington.

(2) **Required elements.**

(a) A construction joint venture or similar arrangement is a potential tax avoidance arrangement or transaction when it:

(i) Provides substantially guaranteed payments to the construction contractor for construction services rendered;

(ii) Does not provide the construction contractor with the right to share substantial profits in the venture; and

(iii) Does not require the construction contractor to bear significant risks of loss in the venture.

The construction joint venture is considered a sale of construction services and potential tax avoidance if (a)(i) through (iii) of this subsection elements exist and the arrangement is also determined to be unfair tax avoidance under WAC 458-20-280(3). If none of these elements exist, then it is not potential tax avoidance and cannot be unfair tax avoidance.

(b) **Form of the arrangement.** A joint venture or similar arrangement includes a joint venture, partnership, limited liability company, or any similar arrangement between a construction contractor and an owner or developer. This rule applies even if the arrangement includes additional participants. The term "construction contractor" includes any person providing construction services or services in respect to construction. The term "owner or developer" includes, without limitation, a landowner, a lessee of land, a project manager, or a construction manager. An arrangement that fails to meet all elements of a joint venture at common law may still be an arrangement that is considered a joint venture or similar arrangement under this subsection.

(c) **Substantially guaranteed payments.** A "substantially guaranteed payment" is a payment that is guaranteed, secured, or otherwise protected so as to be substantially guaranteed to occur. The determination is based on all relevant facts and circumstances including, without limitation, the terms of any operating agreement or other applicable instrument, common trade practice, and the course of dealing of the parties. The fact that a payment reduces the value of the payee's capital account is not determinative. Whether or not a payment is a guaranteed payment for purposes of Sec. 707(c) of the I.R.C. is not relevant.

(d) **Substantial profits.** A construction contractor is entitled to substantial profits only when it has a vested and unconditional right to receive income earned by the venture in the ordinary course of the venture's business to which the construction contractor's contributed property and/or services relate, after costs of the venture are paid in full or otherwise provided. If the receipt of income is guaranteed, secured, or otherwise protected so as to be substantially guaranteed to occur, it is a substantially guaranteed payment, not a right to share in substantial profits. For purposes of determining substantial profits, a right is unconditional even though dependent on venture profitability. To be "substantial," the right to profits must be substantial when compared to the right to guaranteed payments under the arrangement.

(e) **Significant risks.** A construction contractor bears significant risks when its right to substantial profits is not guaranteed, secured, or otherwise protected so as to be substantially guaranteed to occur. A significant risk of loss to the contractor is deemed to occur when at least one-half of the fair market value of contributed services is at risk.

(3) **Examples.**

Example 1. A construction contractor and a developer create a joint venture under which the developer contributes land, and the construction contractor contributes labor and materials. All contributions and distributions are reflected in adjustments to the value of the parties' capital accounts. The construction contractor's capital account contributions are valued at out-of-pocket cost of labor and materials plus 12% designated as overhead. The venture agreement provides that the venture will obtain a bank construction loan and will use the construction draws to periodically pay down the construction contractor's capital account. The terms of the construction loan require that construction loan proceeds be used to pay the construction contractor and remove applicable liens. Under this arrangement, payments to the construction contractor are substantially guaranteed to occur because the terms of the construction loan require payments to the construction contractor. Because this arrangement provides for substantially guaranteed payments, no substantial right to profits and the loan terms assure no risk of loss to the contractor, it is a *potential* tax avoidance arrangement or transaction under WAC 458-20-280(2). However, it is not unfair tax avoidance unless it is determined to be tax avoidance in accordance with WAC 458-20-280(3).

Example 2. Assume the same facts as in Example 1, but the value of the construction contractor's contributions of labor and materials are credited to its capital account at out-of-pocket cost plus 3% for overhead. Assume that all of the items credited to capital account are substantive credits. Under this arrangement, payments to the construction contractor are substantially guaranteed to occur because the terms of the construction loan require payments to the construction contractor. If the arrangement contains other provisions that also provide the contractor with the right to share substantial profits and require the contractor to bear significant risk of loss in the venture, then the arrangement is not an unfair tax avoidance arrangement or transaction.

Example 3. Assume the same facts as in Example 2, except that nothing in the loan documents or any other agreement require that payments be made to the construction con-

tractor. If the arrangement also provides the contractor with the right to share substantial profits and requires the contractor to bear significant risks of loss in the venture, then the arrangement is not a tax avoidance arrangement or transaction.

Example 4. A construction contractor and a developer create a joint venture under which the developer contributes land and the construction contractor contributes labor and materials. All contributions and distributions are reflected in adjustments to the parties' capital accounts. The value of the construction contractor's capital account contributions include out-of-pocket costs of labor and materials plus 12% designated as overhead. If at any point, the value of the construction contractor's capital account exceeds a specified percentage of the total capital account balances of all members combined, and that percentage is not reduced within 30 days, the construction contractor has the right to require a buy-out by the venture (a "put option"). The purchase price of the put option is equal to the value of the unpaid balance of the construction contractor's capital account. The agreement requires the developer to guarantee the venture's payment obligation under the option. The construction contractor is also entitled up to 5% of the profits of the venture once the improved land is sold. In this example, payments to the construction contractor are substantially guaranteed as a result of the put option and the developer guarantee. In addition, the construction contractor is not entitled to substantial profits of the venture. Therefore, the arrangement is a potential tax avoidance arrangement or transaction under WAC 458-20-280 (2)(a). However, it is not unfair tax avoidance unless it is determined to be tax avoidance in accordance with WAC 458-20-280(3).

Example 5. Assume the same facts as Example 4, but the construction contractor is entitled to 50% of the profits of the venture. However, the developer has the power under the joint venture agreement to issue a call option and buy all of the construction contractor's interest in the venture at any time prior to the sale of the improved property. Under this example, the construction contractor is also not entitled to a substantial share of the profits of the venture because the construction contractor's right can be terminated by unilateral act of the developer. It does not matter whether the developer's call right is discretionary or is limited to a termination "for cause." Because the arrangement provided for guaranteed payments and does not provide the construction contractor with a vested and unconditional right to profits of the venture, the arrangement is a potential tax avoidance transaction. However, it is not unfair tax avoidance unless it is determined to be tax avoidance in accordance with WAC 458-20-280(3).

Example 6. Assume the same facts as Example 4, but the value of the construction contractor's capital account contributions includes only allowable cost of labor and materials plus 3% overhead. However, the purchase price of the put option is equal to the unpaid balance of the construction contractor's capital account plus 8% of the profits of the venture, determined as of the date the put option is exercised. The arrangement is still a potential tax avoidance arrangement. In this example, the price under the put option right is a guaranteed payment because it is guaranteed by the developer.

Example 7. A construction contractor and a developer create a joint venture to build a house, under which the developer contributes land and the construction contractor contributes labor and materials. All contributions and distributions are reflected in adjustments to the parties' capital accounts. Upon sale of the house, the venture will wind up its business, pay or provide for all debts of the venture, and distribute all funds in the following order: (i) A distribution to the construction contractor in an amount equal to the value of its capital account; (ii) a distribution to the developer equal to the value of the amount of its capital account; (iii) substantial profits as defined in subsection (2)(d) of this rule to the construction contractor; and (iv) all remaining funds to the developer. Assume the construction contractor's rights to receive the value of its capital account and the final profits distribution are vested and unconditional, but that neither of the payments are guaranteed, secured, or otherwise protected. In this example, the construction contractor is not entitled to any guaranteed payments. In addition, the construction contractor has a right to substantial profits that are at significant risk of loss. Because none of the elements identified in subsection (2)(a) of this rule above are present, this is not a potential tax avoidance transaction.

Example 8. A construction contractor and a developer create a joint venture under which the developer contributes land and the construction contractor contributes labor and materials. Assume the construction contractor is not entitled to any guaranteed payments. Upon sale of the house, the venture will wind up its business, pay or provide for all debts of the venture, and distribute all funds X% to the developer and Y% to the construction contractor. Assume that the construction contractor's right to receive this Y% of venture profits is vested and unconditional and that the construction contractor is not entitled to any guaranteed payments. Under this example, the construction contractor is entitled to a substantial share of profits earned by the venture in the ordinary course of its business to which the construction contractor's contributions relate. This arrangement is not a potential tax avoidance arrangement or transaction because no payments, including payment of the Y% profit, are guaranteed. Therefore, the right to profits is substantial and the construction contractor also bears significant risk in the venture.

Example 9. Assume the same facts as Example 8, but the developer and an affiliate of the construction contractor enter into a separate contract for project management services. The affiliate will provide all project management and similar services through the contract, under which payment for the services is substantially guaranteed. The arrangement is not potential tax avoidance under this subsection. The project management contract will be subject to tax according to the substance of the arrangement, assuming the affiliate is responsible for construction.

(4) **Related guidance.** Nothing in this rule affects the application of WAC 458-20-170 or other department-published guidance on differentiating between speculative builders and prime contractors. Therefore, an arrangement or transaction may be considered the sale of construction services under WAC 458-20-170 or other guidance, irrespective of whether the arrangement or transaction is potential or unfair tax avoidance under this rule.

(5) **Reserved.**

NEW SECTION

WAC 458-20-28002 Disguised income arrangements described in RCW 82.32.655 (3)(b). (1) **Preface**. This rule includes a number of examples that identify a set of facts and then state a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority. An example that concludes an arrangement or transaction is not unfair tax avoidance under this rule does not mean that the arrangement or transaction is approved by the department under other authority.

The tax consequences of all situations must be determined after a review of all facts and circumstances. Additionally, each fact pattern in each example is self-contained (e.g., "stands on its own") unless otherwise indicated by reference to another example. Examples concluding that sales tax applies to the transaction assume that no exclusions or exemptions apply, and the sale is sourced to Washington.

(2) **Redirecting income as a potential tax avoidance arrangement or transaction.**

(a) **Required elements.** An arrangement that moves income is a potential tax avoidance arrangement or transaction only when all of the following elements are met:

(i) The business activities of the taxpayer or a person related to the taxpayer are of the type taxable in Washington and are integral to providing the property or services; and

(ii) The arrangement or transaction functions to move income to a person that is not taxable in Washington on that income; and

(iii) Income is received by a participant in the arrangement as consideration for property or services and that income is from a person not affiliated with the taxpayer.

Administrative services will not be considered integral to providing property or other services for purposes of this subsection.

The arrangement or transaction is unfair tax avoidance only if it meets all three of these elements and is also determined to be unfair tax avoidance under WAC 458-20-280(3).

(b) **Definitions.**

(i) "Affiliated" means under common control.

(ii) "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract or otherwise. A person who has the power to cause the direction of management and policies includes:

(A) Persons related to the taxpayer; and

(B) Persons with whom the taxpayer acts in concert to direct the management or policies of the entity.

(iii) "Common control" means two or more entities controlled by the same person.

(iv) "Moving" or "moves" is any act or combination of acts that result in receipt of income by a person who is not taxable in Washington on that income, when the taxpayer or a related person receives substantially all the benefit of that income. Such acts may include without limitation: An assignment, transfer, lease, or license of income-producing assets; the sale of property or services at less than market value; and capital contributions and distributions from a capital account.

(3) **Examples.**

Example 1. A Washington company ("Parent") forms a wholly owned limited liability company in Nevada ("Subsidiary"). Subsidiary has one part-time employee in Nevada, rents shared office space and has the same corporate officers as Parent. Parent causes Subsidiary to enter into sales and service contracts with customers both within and without Washington for the sale of intangible personal property and consulting services. Subsidiary hires Parent to provide all services necessary to create and support the intangible personal property, and to provide the consulting services to Subsidiary's customers. Subsidiary pays Parent a nominal amount for these services. Subsidiary transfers its remaining profits to Parent through ownership distributions. Assume the income is not taxable to Subsidiary but would be taxable if received by Parent. This arrangement is potential tax avoidance because the arrangement ensures that income received from customers for the services performed by Parent, which income would otherwise be taxable in Washington, is received by Subsidiary, not Parent. However, it is only an unfair tax avoidance transaction if it is also determined to be tax avoidance under WAC 458-20-280(3).

Example 2. Assume the same facts as Example 1, but all customers of the Subsidiary (formerly customers of Parent) are affiliates of Parent. Assume the intangible personal property and consulting services that the customers purchase from Subsidiary are not integral to any property or services provided by the customers to nonaffiliated persons. This arrangement is not potential tax avoidance because the ultimate customers of the Subsidiary in this arrangement are affiliates, rather than persons not affiliated with the taxpayer.

Example 3. After May 31, 2010, a Washington company ("Parent") forms multiple separate wholly owned Nevada subsidiaries ("S-1," "S-2," "S-3," etc.). Parent, as agent of the Nevada subsidiaries, enters into contracts with customers for services to be provided both within and without Washington. Parent limits the number of agreements per subsidiary so that each subsidiary's annual gross income is less than $50,000. Each Subsidiary hires Parent to provide all services necessary for the Subsidiary to meet its contract obligations. Each Subsidiary pays Parent only a nominal amount for these services. Each subsidiary transfers its remaining profits to Parent through ownership distributions. This arrangement is a potential tax avoidance transaction because the arrangement ensures that income received from customers for the services performed by Parent (and otherwise taxable in Washington) is received by the subsidiaries. The arrangement further ensures that each subsidiary's gross income does not meet minimum nexus standards in Washington. However, it is only an unfair tax avoidance transaction if it is also determined to be tax avoidance under WAC 458-20-280(3).

Example 4. A Washington parent company forms a Nevada subsidiary and contributes income-producing assets to it in exchange for ownership interests. The Nevada subsidiary is adequately capitalized and uses its own employees to complete the activities necessary to sell property or services to customers. However, the parent company provides administrative services to the subsidiary at a below market cost. After paying all other costs, the Nevada subsidiary distributes its net income to the parent company. This is not a potential

tax avoidance arrangement because the parent company's business activities are not integral to the subsidiary's ability to provide the property or services to its customers.

Example 5. A Washington parent company forms a Delaware subsidiary that is adequately capitalized and carries on substantial business activities using its own property or employees. Sales representatives employed by the Washington parent company call on potential customers and enter into product sales contracts on behalf of the Washington parent. The Washington parent then transfers those contracts to the subsidiary, and the subsidiary fulfills the orders and receives the income. After paying its costs, the Delaware subsidiary distributes its net income to parent. This arrangement is a potential tax avoidance arrangement because the Parent's sales representatives' activities are integral to the subsidiary's ability to provide the property or services to its customers. However, it is only an unfair tax avoidance transaction if it is also determined to be tax avoidance under WAC 458-20-280(3).

Example 6. A Washington manufacturer wholesales its products both within and without Washington. The Washington manufacturer forms an Idaho subsidiary company and transfers all of its wholesale contracts to it. The manufacturer causes the subsidiary to purchase and hold all raw materials necessary to manufacture the products. The subsidiary then hires the Washington manufacturer to act as a processor for hire. The subsidiary, as owner of the manufactured products, sells them under the transferred wholesale contracts. Assume the subsidiary has nexus with Washington. This arrangement is not a potential tax avoidance arrangement because it does not function to move income from the sale of goods or services from an entity taxable in Washington to a related entity that is not taxable in Washington on that income. The subsidiary is taxable on all sales in Washington in the same manner as was the manufacturer.

Example 7. Assume the same facts as Example 6, except Parent is not a processor for hire. The Washington manufacturer forms a Washington subsidiary company and transfers all of its sales contracts to it. The subsidiary purchases all of the products made by the manufacturer at a reasonable discount. The subsidiary then sells the products under the transferred contracts. This arrangement is not a potential tax avoidance arrangement because the subsidiary is taxable on all sales in Washington in the same manner as was the manufacturer. The arrangement does not function to move income from the sale of goods or services from an entity taxable in Washington to a related entity that is not taxable in Washington on that income.

Example 8. Assume the same facts as Example 7, but the subsidiary is an Oregon company with no nexus with Washington. Assume that the products are not warehoused in Washington, but are immediately shipped upon production and that the Oregon subsidiary has no other activities that create nexus with Washington. This arrangement is a potential tax avoidance arrangement because it functions to move income from the sale of the product from the manufacturer to the Oregon subsidiary. However, it is only an unfair tax avoidance transaction if it is also determined to be tax avoidance under WAC 458-20-280(3).

NEW SECTION

WAC 458-20-28003 Sales and use tax avoidance arrangements described in RCW 82.32.655 (3)(c). (1) **Preface.** This rule includes a number of examples that identify a set of facts and then state a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority. An example that concludes an arrangement or transaction is not unfair tax avoidance under this rule does not mean that the arrangement or transaction is approved by the department under other authority.

The tax consequences of all situations must be determined after a review of all facts and circumstances. Additionally, each fact pattern in each example is self-contained (e.g., "stands on its own") unless otherwise indicated by reference to another example. Examples concluding that sales tax applies to the transaction assume that no exclusions or exemptions apply, and the sale is sourced to Washington.

(2) **Property ownership by a controlled entity as a potential tax avoidance arrangement.**

(a) **Required elements.** All three of the following elements must be met for property ownership by a controlled entity to be considered a potential tax avoidance arrangement:

(i) The taxpayer engages in a transaction in which the taxpayer, or a person(s) acting in concert with the taxpayer, vests title or any other ownership interest of tangible personal property in an entity;

(ii) The taxpayer exercises control over the entity in such a manner that the taxpayer effectively controls the tangible personal property; and

(iii) The tangible personal property is used by the taxpayer in Washington without payment of Washington retail sales tax or use tax on its full value.

The arrangement or transaction is unfair tax avoidance only if it meets all three of the elements in (a)(i) through (iii) of this subsection and is also determined to be unfair tax avoidance under WAC 458-20-280(3). If the arrangement or transaction is determined to be unfair tax avoidance, the department will determine and assess tax according to the actual substance of the arrangement or transaction which is presumed to be direct acquisition, ownership and use of the tangible personal property by the taxpayer.

(b) **Definition of "entity."** For purposes of this subsection, an "entity" is any taxable entity including, a trust, estate, corporation, limited liability company, partnership, joint venture or other business or financial structure with a legal or identifiable separate existence.

(c) **Control of the entity.** A taxpayer controls an entity when either:

(i) The taxpayer possesses, directly or indirectly, more than fifty percent of the voting power of the entity, or more than fifty percent of the power to direct or cause the direction of the management and policies of the entity, whether through ownership, power of revocation, by contract, or otherwise; or

(ii) A taxpayer exercises control over an entity in such a manner as to effectively retain control over the tangible personal property when the taxpayer has the power to direct or

cause the direction of the use or disposition of the tangible personal property, including the power of direction and control held by a principal over an agent.

(d) **Attribution.** A taxpayer's total percentage of voting power or power to direct the management or policies of an entity, or of the tangible personal property also includes the voting or management authority held by, or for the benefit of:

(i) Persons related to the taxpayer as defined in WAC 458-20-280 (1)(b)(vi); and

(ii) Persons with whom the taxpayer acts in concert to obtain control over the tangible personal property or entity in excess of the share of control attaching to a person's ownership or beneficial interests in the entity.

(e) **Presumption of control.** Whether a person has effective control over tangible personal property is based on all facts and circumstances. A person is presumed to have effective control over the tangible personal property when the person has control over the entity that holds the property.

(f) **Full value.** "Full value" means the fair market value of the tangible personal property at the time it is first used in Washington.

(g) **Safe harbor – No tax benefit.** The department will not disregard title in or ownership by a controlled entity if the arrangement does not provide an exemption, deduction, or otherwise result in a reduction in taxes, under chapter 82.08 or 82.12 RCW that would not have been available if the taxpayer had been vested with title or ownership directly. Similarly, the department will not disregard title in or ownership by a controlled entity if deferred retail sales tax or use tax is paid on the full value of the tangible personal property when it is first used in Washington.

(h) **Safe harbor – Bona fide merger or sale of a business.**

The department will not disregard title in or ownership by a controlled entity when that arrangement arises out of or is related to the sale of stock or ownership interests in a substantive operating business, including as part of a statutory merger. For purposes of this subsection, "substantive operating business" means a business that is adequately capitalized and carries on substantial business activities using its own property or employees, other than the business of owning or leasing tangible personal property of the kind or nature as the tangible personal property at issue.

(i) **Safe harbor – Certain leasing arrangements.**

The department will not disregard the title in or ownership by a controlled entity when substantially all use of the property is under a lease, at a reasonable rental value or for a timesharing fee, by a substantive operating business for bona fide business purposes, or by a person who is not related to the taxpayer, or a combination of these, provided that retail sales tax is collected and remitted on the lease payments. Similarly, the department will not disregard bailment arrangements under which substantially all use of the property is by a substantive operating business for bona fide business purposes or by a person who is not related to the taxpayer. For purposes of this safe harbor:

(i) "Substantially all use" means at least ninety-five percent of the use of the property, determined by actual use, irrespective of location.

(ii) "Reasonable rental value" means the reasonable rental value for the use of the tangible personal property, determined as nearly as possible according to the value of such use at the places of use of similar property of a like quality and character.

(iii) "Substantive operating business" means a business that is adequately capitalized and carries on substantial business activities using its own property or employees.

(iv) "Bona fide business purpose." Use of tangible personal property serves a bona fide business purpose only when the use, in nature and quantity is ordinary and necessary for the business of the user. Use for entertainment purposes must be directly related or associated with substantial business activities of the user. A bona fide business purpose may include providing employee or director benefits when the business pays the lease, the employee or director is required to report the value of the benefit as compensation for state or federal tax purposes and the benefit is ordinary and reasonable in nature or quantity for the business. See RCW 82.04.360 for the taxability of director's compensation.

(v) For aircraft only: "Timesharing fee" for purposes of this safe harbor is the total sum of all expenses of a flight authorized or permitted under 14 C.F.R. Sec. 91.501 (d)(1) through (10).

(3) **Examples.**

Example A. A Washington resident taxpayer forms a wholly owned Montana limited liability company (MT, LLC). MT, LLC purchases a new motor home, takes delivery and registers the motor home in Montana. MT, LLC pays no retail sales tax or use tax on the purchase. The Washington resident uses the motor home in Washington under a bailment, paying use tax on the reasonable rental value of the motor home. This is a potential tax avoidance arrangement. The taxpayer has complete control over MT, LLC and effective control over the motor home. The taxpayer uses the motor home in Washington, but Washington retail sales or use tax has not been paid on its full value. No safe harbor applies. However, the arrangement is only unfair tax avoidance if it is also determined to be tax avoidance under WAC 458-20-280(3).

Example B. Assume the same facts as Example A, but MT, LLC is owned by a husband and wife, with each having a fifty percent ownership interest in the company. This is still a potential tax avoidance transaction because each spouse's ownership interest in MT, LLC is attributable to the other. Both spouses are deemed to have control over MT, LLC and effective control over the motor home.

Example C. Three Washington residents who are unrelated to each other form a Washington limited liability company. The company purchases an aircraft in Washington for the purpose of leasing to its members and does not pay retail sales tax on the purchase. Each member of the company has a one-third ownership interest and equal voting rights, equal rights to direct the management and policies of the company, and equal power to direct the use or disposition of the aircraft. All use of the aircraft by company members is in Washington, for recreational purposes, and at a fair market rate. The company collects retail sales tax on all lease payments. This is not necessarily a potential tax avoidance arrangement because none of the members of the company is in control of

the company or of the aircraft. However, if the members act in concert to control use of the aircraft in excess of their share of ownership interest, a potential tax avoidance arrangement exists unless a safe harbor applies and it is also determined to be tax avoidance under WAC 458-20-280(3).

Example D. Assume the same facts as Example C, but the members of the company enter into a use agreement with respect to the aircraft under which one of the members, A, is entitled to use the aircraft at any time on a priority basis, while the remaining members are entitled to use the aircraft only if A is not using it. This is a potential tax avoidance arrangement because A acts in concert with the other members regarding the direction and control of the aircraft to obtain rights of use disproportionate with A's ownership or beneficial interests in the entity. Because A is working in concert with the other members of the company, ownership and control held by the other members are attributed to A. Therefore, A is deemed to have 100% of the control of the entity and the aircraft. However, the arrangement is only unfair tax avoidance if no safe harbor applies and it is also determined to be tax avoidance under WAC 458-20-280(3).

Example E. Corporation Y is a substantive operating business located in Washington. Corporation Y forms a Nevada LLC to hold an aircraft that is purchased out of state, but hangared in Washington. Individual I is the president of Corporation Y. Corporation Y leases the aircraft from the LLC and pays a timesharing for its use. The Nevada LLC collects and remits retail sales tax on the lease payments. Corporation Y hires a third-party management company to provide a pilot and crew to fly Individual I to destinations within and without Washington for bona fide business purposes. In addition, Individual I occasionally leases the aircraft from the LLC for a timesharing fee, for I's personal use, but this totals less than 5% of the total use of the aircraft. Assume these uses by Corporation Y and Individual I are the only use of the aircraft. This is not a potential tax avoidance arrangement because it meets the requirements of the safe harbor in subsection (2)(i) of this rule.

Example F. Assume the same facts as Example E, but assume the aircraft was purchased and delivered out of state, and that it is hangared in Oregon. The Nevada LLC does not collect retail sales tax on the lease payments, because the leases are sourced to Oregon. This is a potential tax avoidance arrangement because tax on the lease payments is not paid to Washington.

Example G. A parent company forms a subsidiary, "Y," to purchase and hold a yacht for lease to the parent company for use in Washington. All leases of the yacht are as bareboat charters at a fair market lease rate. The parent company uses the yacht to provide benefits to its directors, to entertain business clients, and for company celebrations. Assume no other use of the yacht, and that the directors report the value of yacht benefit as compensation for B&O and federal income tax purposes. This arrangement meets the safe harbor under subsection (2)(i) of this rule, provided that the described uses by the parent company are quantitatively ordinary and necessary for the business of the parent.

Example H. Assume the same facts as in Example G, but the company only provides the yacht benefit to one of its officers/directors. Assume the benefit allows the officer/director to use the yacht on a priority basis, and that the addition of the yacht benefit makes the officer's/director's compensation materially higher than similarly situated officers/directors within the industry. In the absence of other relevant facts, this arrangement does not meet the safe harbor under subsection (2)(i) of this rule, because it is not ordinary or necessary for a business to provide a single officer with such disparate treatment. However, it is only unfair tax avoidance if the arrangement is determined to be tax avoidance under WAC 458-20-280(3).

Example I. Assume the same facts as in Example G, and that the parent's annual gross income is $50,000. Assume that the total annual payments by the parent for its use of the yacht is $25,000. This arrangement does not meet the safe harbor under subsection (2)(i) of this rule, because it is not ordinary or necessary for a business to spend the equivalent of half of its annual gross income on the use of a yacht. However, it is only unfair tax avoidance if the arrangement is determined to be tax avoidance under WAC 458-20-280(3).

Example J. Company S owns tangible personal property purchased in a retail sale under which all retail sales taxes were paid. Washington resident, Company B, wants to purchase that property from Company S. Company B is a substantive operating business. Company S forms an LLC and transfers the property to it in exchange for all 100% of the ownership interests. Company S then sells 100% of the ownership interests in the LLC to Company B. Company B is now the parent company of the LLC. Company B uses the property in its Washington business activities under a bailment arrangement with the LLC without paying use tax. This is a potential tax avoidance arrangement because Company B, in concert with Company S, vests title of the property in an entity over which Company B obtains control, and then uses the property in Washington without paying retail sales or use tax. It does not meet any of the safe harbors under subsection (2)(g), (h), or (i) of this rule. However, it is only tax avoidance if the arrangement is also determined to be tax avoidance under WAC 458-20-280(3).

Example K. Assume the same facts as Example J, but Company B obtains use of the property through a fair market rate lease arrangement with the LLC. Assume all use of the property by Company B is for bona fide business purposes. This is not a potential tax avoidance arrangement because the arrangement qualifies for the safe harbor under subsection (2)(i) of this rule.

Example L. Assume the same facts as Example K, except that only 90% of the use of the property is by Company B under a fair market lease arrangement for bona fide business purposes. Assume that the other 10% of the use of the property is personal use by Individual I, who is the sole owner of Company B. This is potential tax avoidance because Individual I controls the property through control of Company B and uses the property in Washington without paying retail sales or use tax on the full value of the property. The arrangement does not qualify for any of the safe harbors in subsection (2)(g), (h), or (i) of this rule. However, the arrangement is only tax avoidance if it is determined to be tax avoidance under WAC 458-20-280(3).

Example M. Company O, an Oregon company, is wholly owned by an Oregon resident. Company O purchases

an aircraft for lease to the Oregon resident. The Oregon resident uses the aircraft in Washington for personal purposes, for periods not in excess of 59 days. The aircraft lease is for less than fair market rate. This is a potential tax avoidance arrangement, but the department will not disregard the arrangement because no use tax is due on the Oregon resident's use of the tangible personal property in Washington pursuant to RCW 82.12.0251(1). This qualifies for the safe harbor under subsection (2)(g) of this rule.

Example N. A Washington Taxpayer owns a painting with a significant fair market value. Taxpayer is the sole beneficiary of a trust formed under the laws of the state of Oregon with an Oregon trustee. Under the terms of the trust, the trustee must obtain Taxpayer's authorization before disposing of any trust asset. Assume the trustee of the trust purchases a sculpture from an unrelated party and accepts delivery in Oregon. Taxpayer and the trust then enter into an agreement under which Taxpayer will purchase the trust's sculpture in exchange for cash and the painting held by Taxpayer. Taxpayer pays retail sales tax or use tax on the difference in value between the trade-in painting and the acquired sculpture. Taxpayer displays the sculpture in Washington. This arrangement is a potential tax avoidance arrangement. Taxpayer is the sole beneficiary of the trust and has control over the trust property. Taxpayer uses the trust to create a trade-in arrangement and obtain the use of property in Washington without paying sales or use tax on its full value. The arrangement does not meet any of the safe harbors under subsection (2)(g), (h) or (i) of this rule. However, it is only tax avoidance if the arrangement is also determined to be tax avoidance under WAC 458-20-280(3).

Example O. Company T owns tangible personal property and has paid sales or use tax on the full value of that property. Assume Company T is a substantive operating business as defined in subsection (2)(i)(iii) of this rule. Company A intends to acquire Company T through a merger transaction. Company A forms a wholly owned subsidiary, Newco and Company T is merged into Newco. The entity surviving the merger, Newco, now owns the tangible personal property formerly owned by A. After the merger is completed, Newco permits Company A to use the tangible personal property under a bailment arrangement. Company A does not pay sales or use tax on the value of the property it uses because Newco, as the successor to Company T, is a bailor that has paid sales or use tax on the property. This is not a tax avoidance arrangement because it qualifies for the safe harbor under subsection (2)(h) of this rule.

WSR 14-21-157
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed October 21, 2014, 3:52 p.m.]

Supplemental Notice to WSR 14-17-086.

Preproposal statement of inquiry was filed as WSR 13-23-077.

Title of Rule and Other Identifying Information: Chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations; WAC 296-15-266 Penalties.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way, Room S117, Tumwater, WA 98501, on December 1, 2014, at 9:30 a.m.

Date of Intended Adoption: December 23, 2014.

Submit Written Comments to: Mike Ratko, Department of Labor and Industries, P.O. Box 44100, Olympia, WA 98504-4100, e-mail michael.ratko@lni.wa.gov, fax (360) 902-4474, by December 1, 2014.

Assistance for Persons with Disabilities: Contact office of information and assistance by November 24, 2014, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of labor and industries filed a CR-102 (WSR 14-17-086) proposing amendments to WAC 296-15-266 regarding the circumstances under which the department will consider assessing a penalty for an unreasonable delay of benefits, and the process of this penalty request.

The supplemental CR-102 amends the proposal in response to comments received during the initial comment period to clarify when a benefit is considered unreasonably delayed, remove language that is vague or imprecise, add language from statute for clarifying purposes, remove requirement for employer to notify department when payment is denied, add a requirement for employers to notify the department when there is a worker or medical provider dispute over payment denial, and provide for an additional five working days for employer response time within the thirty day requirement for responding to penalties, etc. A new hearing has been scheduled and the written comment period extended.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mike Ratko, Tumwater, Washington, (360) 902-6369.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement (SBEIS) was prepared and filed with the CR-102 proposal under WSR 14-17-086. The supplemental CR-102 amendments do not impact the SBEIS analysis.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis (CBA) was prepared for the CR-102 proposal under WSR 14-17-086. The supplemental CR-102 amendments do not impact the CBA.

October 21, 2014
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 06-06-066, filed 2/28/06, effective 4/1/06)

WAC 296-15-266 Penalties. ((~~**What must a self-insurer do when the department issues an order assessing a penalty?** The self-insurer must make payment of the penalty assessment on or before the date the order becomes final.~~)) (1) **Under what circumstances will the department**

consider assessing a penalty for an unreasonable delay of benefits, when requested by a worker? Upon a worker's request, the department will consider assessment of an unreasonable delay of benefits penalty for:

(a) Time loss compensation benefits: The department will issue an unreasonable delay order, and assess associated penalties based on the unreasonably delayed time loss as determined by the department, if a self-insurer:

(i) Has written medical certification based on objective findings from the attending medical provider authorized to treat that the claimant is unable to work because of conditions proximately caused by the industrial injury or occupational disease, or the claimant is participating in a department-approved vocational plan; and

(ii) Fails to make the first time loss payment to the claimant within fourteen calendar days of notice that there is a claim*, or fails to continue time loss payments on regular intervals as required by RCW 51.32.190(3); and

(iii) Fails to request, with supporting medical evidence and within thirty days of receiving written notice of a newly contended medical condition related to the industrial injury or occupational disease, that the department settle a dispute about the covered conditions or eligibility for time loss compensation. For good cause, in the department's sole discretion, a sixty-day extension may be granted.

* Notice of claim is provided to the self-insured employer when all the elements of a claim are met. The elements of a claim are:
• Description of incident. Examples: Self-Insurance Form 2 (SIF-2), physician's initial report (PIR), employer incident report.
• Diagnosis of the medical condition. Examples: PIR, on-site medical facility records if supervised by provider qualified to diagnose.
• Treatment provided or treatment recommendations. Examples: PIR, on-site medical facility records if supervised by provider qualified to treat.
• Application for benefits. Examples: SIF-2, PIR, or other signed written communication that evinces intent to apply.

(b) Unreasonable delays of loss of earning power compensation payments or permanent partial disability award payments will also be subject to penalty.

(c) Payment of medical treatment benefits: The department will issue an unreasonable delay order, and assess associated penalties based on the department's fee schedule, order, and accrued principal and interest, if a self-insurer fails to pay all fees and medical charges within sixty days of receiving a proper billing, as defined in WAC 296-20-125 through 296-20-17004, or sixty days after the claim is allowed per RCW 51.36.080.

(i) If the self-insurer believes that it should not pay the billing, or if the self-insurer believes that the treatment is not for a condition proximately caused by the industrial injury or occupational disease, the self-insurer must, within sixty calendar days of receiving a billing, clearly state in writing to the worker and the medical provider why the payment is denied.

(ii) If a denial is disputed by the worker or medical provider and the self-insurer does not allow the bill, the self-insurer must notify the department within thirty days, and the department will review the reasons provided by the self-insurer and will make a decision by order within thirty days.

(d) Authorization of emergent or life-saving medical treatment benefits: The department will issue an unreasonable delay order, and assess associated penalties, based on the department's fee schedule, order, and accrued principal and interest, if a self-insurer fails to respond to requests to authorize emergent or life-saving treatment within fourteen days after receiving notice of the request for treatment.

(i) If the request is denied, the self-insured employer must clearly tell the medical provider and the claimant, in writing, why the request is being denied.

(ii) If the medical provider or claimant disagrees with the self-insurer's decision, either of them may file a dispute with the department.

(e) Failure to pay benefits without cause: The department will issue an order determining an unreasonable refusal to pay benefits, and assess associated penalties, based on the department's calculation of benefits or fee schedule, if a self-insurer fails to pay a benefit such as time loss compensation, loss-of-earning-power compensation, permanent partial disability award payments, or medical treatment when there is no medical, vocational, or legal doubt about whether the self-insurer should pay the benefit. Accrued principal and interest will apply to nonpayment of medical benefits.

(f) Paying benefits during an appeal to the board of industrial insurance appeals: The department will issue an unreasonable delay order, and assess associated penalties, based on the department's calculation of benefits or fee schedule, if a self-insurer appeals a department order to the board of industrial insurance appeals, and fails to provide the benefits required by the order on appeal within fourteen calendar days of the date of the order, and thereafter at regular fourteen day or semi-monthly intervals, as applicable, until or unless the board of industrial insurance appeals grants a stay of the department order, or until and unless the department reassumes jurisdiction and places the order on appeal in abeyance, or until the claimant returns to work, or the department issues a subsequent order terminating the benefits under appeal.

(g) Benefits will not be considered unreasonably delayed if paid within three calendar days of the statutory due date.

(2) **How is a penalty request created and processed?**

(a) An injured worker may request a penalty against his or her self-insured employer by:

(i) Completing the appropriate self-insurance form or sending a written request providing the reasons for requesting the penalty;

(ii) Attaching supporting documents (optional).

(b) Within ten working days of receipt of a certified request, the self-insured employer must send its claim file to the department. Failure to timely respond may subject the self-insured employer to a rule violation penalty under RCW 51.48.080. The employer may attach supporting documents, or indicate, in writing, if the employer will be providing further supporting documents, which must be received by the department within five additional working days. If the employer fails to timely respond to the penalty request, the department will issue an order in response to the injured worker's request based on the available information.

(c) The department will issue an order within thirty days after receiving a complete written request for penalty per (a) of this subsection. The department's review during the thirty-day period for responding to the injured worker's request will include only the claim file records and supporting documents

provided by the worker and the employer per (a) and (b) of this subsection.

(d) In deciding whether to assess a penalty, the department will consider only the underlying record and supporting documents at the time of the request which will include documents listed in (a) and (b) of this subsection, if timely available, to determine if the alleged untimely benefit was appropriately requested and if the employer timely responded.

(e) The department order issued under (c) of this subsection is subject to request for reconsideration or appeal under the provisions of RCW 51.52.050 and 51.52.060.

WSR 14-21-158
PROPOSED RULES
DEPARTMENT OF NATURAL RESOURCES

[Filed October 21, 2014, 4:16 p.m.]

Supplemental Notice to WSR 14-09-107.

Preproposal statement of inquiry was filed as WSR 14-05-098.

Title of Rule and Other Identifying Information: Geoduck diver safety program, effective January 1, 2015, all commercial wildstock geoduck divers participating in the state managed fishery are required to annually demonstrate proof of compliance with the geoduck diver safety program to be maintained on a department of natural resources (DNR) harvest plan of operations and/or obtain a commercial diver license under RCW 77.65.410. Proposed safety requirements include a combination of training qualifications and medical requirements. Training qualifications include CPR/first aid certification, emergency oxygen administration certification, Washington state boater education card, and an annual review of the fundamental principles of dive safety. Medical requirements include a physical examination. The proposed rule has been revised from the original proposal (WSR 14-09-107) based on the comments received during public hearings. Important changes include: (1) The hyperbaric component of the physical has been removed; (2) the frequency of the medical requirement has been reduced from annual to every three years; and (3) a year long deferment of medical requirements to account for temporary physical impairments.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on November 25, 2014, at 6:00 p.m.

Date of Intended Adoption: December 2, 2014.

Submit Written Comments to: Matthew Goehring, DNR, 1111 Washington Street S.E., Mailstop 47027, Olympia, WA 98504-7027, e-mail matt.goehring@dnr.wa.gov, fax (360) 902-1786, by November 26, 2014.

Assistance for Persons with Disabilities: Contact Ms. Megan McKay by November 18, 2014, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 2SHB 1764 requires DNR to adopt rules establishing a geoduck diver safety program. The proposed program establishes mandatory safety training and medical requirements for all divers participating in the state managed wildstock geoduck fishery. Mandated safety requirements are intended to mitigate the inherent hazards associated with working in hyperbaric conditions and reduce the probability of diver related accidents. Increased safety requirements will reduce risk exposure for geoduck divers, as well for other individuals that provide emergency response in the event of a dive-related accident.

Reasons Supporting Proposal: Commercial geoduck harvesting techniques expose divers to a wide range of occupational health and safety hazards. Despite recognized hazards, there are currently no mandated safety requirements for geoduck divers engaged in the wildstock fishery. The rule aligns geoduck harvest diving with industry standards for commercial diving operations.

Statutory Authority for Adoption: RCW 43.30.560.

Statute Being Implemented: RCW 43.30.560.

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: DNR will implement compliance verification for the geoduck diver safety program. Information will be shared with department of fish and wildlife (DFW) for the purposes of issuing commercial geoduck diver licenses under RCW 77.65.410.

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Matthew Goehring, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-1090; Implementation: Blain Reeves, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-1731; and Enforcement: Todd Palzer, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-1864.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

I. Executive Summary: The proposed rule to establish a geoduck diver safety program includes a combination of annual training qualifications and medical requirements for divers to participate in the state managed wildstock geoduck fishery. The mandated requirements are comparable with industry standards for commercial diving. All divers must annually demonstrate compliance prior to being listed on a DNR harvest plan of operations or issued a DFW geoduck diver license under RCW 77.65.410.

The annualized cost of compliance with the proposed geoduck diver safety program is estimated to be $368-418 per diver and is unrelated to harvest revenue. Since compliance is connected to a privately held license, all costs are assumed to be borne by the individual diver. For the purposes of this analysis all divers fall within the scope of a small business - either they are employed by a company with fewer than fifty employees or are considered self-employed. The rule will not have a disproportionate impact on small businesses. However, the relative burden of compliance costs as measured as a percent of diver income will be related to the number of days an individual spends on water harvesting geoduck.

Given the high value of the geoduck commodity, the proposed rule will not impact overall industry demand for harvest divers. However, an unknown percentage of divers may

not be deemed medically qualified to conduct harvest diving under hyperbaric conditions. Some percentage of divers who fall within the bottom quartile in terms of frequency of dive days may also decide to not pursue licensing due to the cost of compliance as compared to their relatively small income from geoduck harvest. This could result in a small decrease in total number of licensed divers, but is not anticipated to impact total annual geoduck harvest.

II. Background: DNR, DFW, and Puget Sound treaty Indian tribes jointly manage the commercial wildstock geoduck fishery. Annual harvest of wildstock geoduck has increased from 82,000 pounds in 1970 to 4,327,000 pounds in 2010 valued at over $36 million (DFW, 2011). As manager of state-owned aquatic lands, DNR maintains proprietary rights to fifty percent of the annual harvestable commercial quota. Since 2003, the state-managed portion of annual harvest has averaged 1,965,295 pounds, generating between $3.6 and $29.6 million of revenue (DNR, unpublished data).

Commercial harvest occurs within tracts known to support commercial quantities of geoducks. DNR auctions the right to harvest quotas within defined tracts. A harvest agreement between DNR and a purchaser outlines legally binding terms of harvest. Successful bidders must submit a harvest plan of operations outlining (1) individuals, vessels, and vehicles involved in harvest and transport operations; (2) legal relationship between purchasers and individuals engaging in harvest operations; and (3) assurances that all employees and subcontractors will comply with the terms of the harvest agreement.

Geoduck harvest is completed using surface-supplied air diving techniques. Divers are deployed from harvest vessels and use handheld water jets to extract geoduck from depths between eighteen and seventy feet below mean lower low water. All divers participating in the state-managed wildstock fishery must be identified within a DNR harvest contract plan of operations and possess a DFW commercial geoduck diver license under RCW 77.65.410.

Rationale for Rule Making: The commercial geoduck diving occupation exposes divers to a wide range of health and safety hazards. Despite recognized hazards associated with commercial diving, there are currently no mandated safety requirements for geoduck divers engaged in the wildstock fishery. The proposed rule establishes training and medical requirements that are similar to industry-wide commercial diving standards.

2SHB 1764 directs DNR to establish: (a) An advisory geoduck harvester safety committee; and (b) a geoduck diver safety program outlining mandatory safety requirements for all divers. The safety committee, composed of agency and industry representatives, was required to provide DNR recommendations for safety program requirements by December 1, 2013. Beginning January 1, 2015, all divers will be required to demonstrate compliance with the diver safety program annually in order to be maintained on a DNR plan of operations and to obtain a commercial geoduck diver license under RCW 77.65.410.

The Federal Occupational Safety and Health Administration (OSHA) and Washington state department of labor and industries (L&I) have developed commercial diving standards to address the unique safety concerns associated with operating in a hyperbaric environment. However, OSHA and L&I jurisdiction is limited by an ambiguous employee-employer relationship and the fact that geoduck divers are deployed from a vessel as opposed to a fixed platform.

Summary of Proposed Rule: The proposed geoduck diver safety program consists of a combination of training qualifications and medical requirements. Divers will be required to demonstrate compliance annually.

1. Training Qualifications:

- Cardiopulmonary resuscitation (CPR) and first aid certification;
- Emergency oxygen administration certification;
- Washington state boater education card; and
- Signed acknowledgement confirming review and understanding of principles of dive safety.

2. Medical Requirements:

- Triennial physical examination.

All divers must annually demonstrate proof of compliance with the geoduck diver safety program beginning January 1, 2015.

III. Analysis of Compliance Cost for Washington Businesses:

Affected Industry: All divers licensed under RCW 77.65.410 and engaged in the state-managed wildstock geoduck fishery would be required to comply with the proposed geoduck diver safety program. Compliance is tied to the individual license holder - not the employer. 2SHB 1764 established an annual maximum of seventy-seven licenses beginning in 2015. From 2008 to 2012, DFW issued an average of sixty-nine commercial geoduck diver licenses. Annual licenses ranged from sixty-three licenses in 2012 to eighty-one licenses in 2009 (DFW, unpublished data). Considerable ambiguity surrounds the employee-employer relationship between geoduck divers and harvest vessel operators. For the purposes of this analysis all divers fall within the scope of a small business - either they are employed by a company with fewer than fifty employees or are considered self-employed. There are several geoduck purchasers that exceed the fifty employee threshold for small businesses; however, these firms do not directly employ divers at this time.

Tribal and aquaculture harvest divers are not subject to the proposed requirements.

Cost of Compliance: The cost of the rule requirements can be broken down into the cost of:

- Training certifications and medical examinations;
- Divers' time spent on the training; and
- Recordkeeping and reporting.

Costs for the training certificates and medical examinations were estimated based on consultation with providers and publically [publicly] available health care cost data. The cost of the divers' time was estimated based on an average hourly wage of $15 and the time required for training requirements. The cost of maintaining and presenting the training records to DNR was deemed negligible compared to the other costs and was not included. Per diver cost estimates are summarized in Table 1.

Table 1: Proposed Alternatives and their Average Costs, per Diver

	Frequency	Time (hrs)	Course/ Exam Cost	Time Cost	Annual Cost
Training Requirements					
CPR and first aid certication [certification]	Biennial	6	$90	$90	$90
Administrating emergency oxygen certication [certification]	Biennial	2	$95	$30	$63
Dive safety review	Annual	4	$0	$60	$60
Washington state boater education course	Once	3	$10	$45	$6
Medical Requirements					
Physical examination of diver's fitness	Triennial	3	$400-550*	$45	$149-199
Totals		**17**	**$595-745**	**$255**	**$368-418**

* Costs estimated from Health Care Bluebook and Fair Health Consumer Cost Lookup. Variation in costs is a result of certain medical tests being required only upon initial examination and/or after a diver reaches thirty-five years of age.

Impact on Small Businesses: Geoduck divers within the commercial wildstock fishery are self-employed or employed by harvest businesses that fall below the fifty employee small business threshold as defined in RCW 19.85.020. Since compliance is connected to a privately-held commercial diver license, the costs are expected to be borne by individual divers in the short-term. Given that this rule only affects small businesses, there is no disproportionate impact on small versus large businesses.

The burden of compliance for individual divers will be proportionate to diver compensation. Divers are compensated based on the total pounds of geoduck harvested. While diver specific data is unavailable, compensation is assumed to be highly variable and dependent on the number of days an individual participates in harvest diving. Table 2 estimates the average cost of compliance as a percentage of average diver incomes. Estimates were derived from 2013 DNR records of "days on water" for each diver.

As shown in the table, compliance costs as a percentage of income from diving for the average diver in the bottom quartile of dive days are estimated to be larger than for the average diver in the upper quartile. This is because the bottom quartile appears to be composed of spot - or infrequent - divers, whose dive days range from only one day per year to twenty-seven days per year.

Table 2. Estimated Cost of Compliance as a Percentage of Diver Income (2013 dive data)

Percentage of Divers	Diver-Days on Water	Estimated Dive hrs*	Percentage of Total hrs	Average Income based on harvest rate assumption**		Compliance Costs as a % of average income	
				200 lbs/hr	300 lbs/hr	200 lbs/hr	300 lbs/hr
Top Quartile	1584	3960	41%	$60,923	$91,385	0.6-0.7%	0.4-0.5%
Second Quartile	1198	2995	31%	$46,077	$69,115	0.8-0.9%	0.5-0.6%
Third Quartile	837	2092	22%	$32,192	$48,288	1.1-1.3%	0.8- 0.9%
Bottom Quartile	242	605	6%	$9,077	$13,615	4.1-4.6%	2.7-3.1%

* *Based on an average of 2.5 hours of dive time per day.*

** *Assumes diver compensation of $1/lb.*

Estimated Loss of Jobs: RCW 19.85.040 (2)(d) requires that the economic analysis include "(a)n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

Geoduck is a high value commodity. Although diver compliance costs may eventually affect profits for harvesters and purchasers, the relative cost of compliance with respect to the overall value of the geoduck commodity is not expected to impact industry demand for divers to harvest geoduck quotas. Although no net loss in diver demand is anticipated, some percentage of divers may be determined to not be medically fit to dive following physician examination. It is difficult to estimate at this time what percentage of divers may not pass a physical examination.

The higher relative costs of compliance as a percentage of total harvest income may also result in a percentage of infrequent divers deciding to no longer pursue a diver license. This could result in an overall decrease in the number of licensed divers with more work being concentrated among fewer divers. Alternatively, some divers may find more work available and increase their dive days to compensate for the costs of compliance with the safety program.

IV. Actions Taken to Reduce Impact on Small Businesses: RCW 19.85.030 requires an agency to reduce the cost of compliance for small businesses where legal and feasible

within the stated objectives of the underlying statutes. DNR considered a series of alternatives to minimize the costs for small businesses.

A large proportion of the cost of compliance is associated with the medical examination requirement. DNR considered an alternative without a medical requirement, but determined a diver safety program without a physical examination would not meet the intended objective of 2SHB 1764 to enhance diver safety. Although a dive physical represents a substantial cost, it is considered an industry standard to ensure divers are physically able to withstand the challenges of working under hyperbaric conditions. Annual dive physicals are required under L&I rules for commercial diving operations (WAC 296-37-525) and recommended by the International Consensus Standards for Commercial Diving and Underwater Operations (2011). In response to industry concerns about the costs, DNR revised the proposed rule to reduce the frequency of physical examinations. Requiring a physical examination every three years, as opposed to annually, will reduce estimated costs by approximately fifty percent.

DNR proposes an annual signed acknowledgement that a diver has reviewed and understands the principles of dive safety as outlined by the geoduck harvest safety committee. A self-directed review of materials, as opposed to an in-person course, will reduce the cost and time associated with compliance. Larger employers (still fewer than the fifty employee threshold) may have been able to negotiate reduced per-person course rates that would have been unavailable to smaller businesses and resulted in a disproportionate burden on smaller businesses.

CPR/first aid and emergency oxygen training are two-year certifications. Any reduction in frequency of training might cause a lapse in certification and compromise diver safety.

V. Small Business Involvement in Development of Proposed Rules: 2SHB 1764 directs DNR to establish a geoduck harvest safety committee and hold ongoing quarterly meetings. Committee membership includes representatives from the Washington Harvesters Association (vessel owners) and the Harvest Divers Association (divers). Both associations represent the interests of small businesses within the industry. The proposed rules are substantively based on the committee report submitted in November 2013 outlining recommendations for a geoduck diver safety program. The revised proposal also attempts to address the concerns identified during public meetings held in May and June 2014.

DNR has posted information pertaining to the rule making on its agency web site and reached out to individual divers as part of its geoduck harvest compliance program. Notice of the proposed rule making will be distributed to all licensed divers and prospective purchasers. One public hearing will be conducted to summarize the proposed rule, answer industry questions, and accept public comments.

VI. References: Association of Diving Contractors International. (2011). International Consensus Standards for Commercial Diving and Underwater Operations. 6th Edition.

Washington Department of Fish & Wildlife. (2011). Commercial wild stock geoduck fishery landings and ex-vessel value in Washington. Accessed April 14, 2014. http://wdfw.wa.gov/fishing/commercial/geoduck/geoduck_historic_landings_value_table.pdf.

A copy of the statement may be obtained by contacting Matthew Goehring, DNR, 1111 Washington Street S.E., Mailstop 47027, Olympia, WA 98504, phone (360) 902-1090, fax (360) 902-1786, e-mail matt.goehring@dnr.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Matthew Goehring, DNR, 1111 Washington Street S.E., Mailstop 47027, Olympia, WA 98504, phone (360) 902-1090, fax (360) 902-1786, e-mail matt.goehring@dnr.wa.gov.

October 21, 2014
Megan Duffy
Deputy Supervisor
Aquatics and
Environmental Protection

NEW SECTION

WAC 332-30-172 Geoduck diver safety program. (1) General.

(a) Beginning January 1, 2015, divers shall annually demonstrate compliance with the geoduck diver safety program established in this section prior to being identified on a department geoduck harvest agreement plan of operations.

(b) The department shall accept applicable documents and certifications beginning October 1st of each year to verify compliance for the subsequent calendar year. Materials will be reviewed in the order they are received and divers will be notified of their compliance status within thirty-days of receipt of all required documentation.

(c) The department will maintain an electronic database documenting annual compliance with the program. Compliance verification shall expire at the end of a calendar year.

(d) If a plan of operations spans portions of two calendar years, the department will only verify diver compliance for the calendar year the diver is initially identified on the plan of operations.

(2) Training qualifications.

(a) Divers shall provide proof of completion of the following training qualifications:

(i) Cardiopulmonary resuscitation (CPR) and first-aid certification;

(ii) Emergency oxygen administration certification;

(iii) Washington state boater education card; and

(iv) Signed acknowledgment confirming review and understanding of the fundamental principles of diver safety, including:

(A) Diving physiology and physics;

(B) Diving operations and emergency procedures;

(C) Tools, equipment, and techniques relevant to geoduck harvesting;

(D) U.S. Coast Guard vessel safety requirements; and

(E) Other subject areas as determined by the geoduck harvest safety committee.

(b) The geoduck harvest safety committee established in RCW 43.30.555 shall develop, distribute, and update as necessary, review materials on the principles of dive safety.

(3) Medical requirements.

(a) Divers shall be medically fit to harvest geoduck at depths up to 70 feet below mean lower low tide or otherwise be exposed to hyperbaric conditions.

(b) An initial medical examination shall be completed within six months preceding department review. Subsequent examinations shall be required at three year intervals from the date of initial examination.

(c) A copy of the medical standards in this section and a summary of the nature and extent of hyperbaric conditions to which geoduck harvest divers are exposed shall be provided to the examining physician.

(d) Scope of medical examination:

(i) Medical history;

(ii) Diving related work history;

(iii) Basic physical examination;

(iv) Tests required by Table 1; and

(v) Any additional tests at the discretion of the examining physician.

Table 1
Tests for Geoduck Diving Medical Examination

Test	Initial Examination	Reexamination
Chest X ray	X	
Visual acuity	X	X
Color blindness	X	
EKG: Standard 12L[1]		
Hearing test	X	X
Hematocrit or hemoglobin	X	X
Sickle cell index	X	
White blood count	X	X
Urinalysis	X	X

[1] To be administered to the diver once at age thirty-five or over.

(e) A written report prepared by the examining physician shall be submitted to the department. The report must identify the date of examination in accordance with this standard and provide the examining physician's opinion of a diver's medical fitness to conduct geoduck harvest diving in depths up to 70 feet below mean lower low tide. Test results used to determine medical fitness shall not be submitted to the department.

(f) Consideration of temporary physical impairments: If a physician's report states an individual is medically unfit for geoduck harvest diving, the individual shall be considered in compliance with the medical requirements in this section for one license-year for the sole purposes of licensing under RCW 77.65.410. Individuals found medically unfit to dive shall not be permitted on a geoduck harvest plan of operations as a diver. Nothing shall preclude such individuals from being identified on a geoduck harvest plan of operations in another capacity. Individuals declared medically unfit to dive in a given license-year must be reexamined and found medically fit to dive no later than the renewal deadline of the subsequent license-year in order to maintain compliance with the requirements of this section for the purposes of licensing under RCW 77.65.410.

WSR 14-21-162
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed October 22, 2014, 7:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-103.

Title of Rule and Other Identifying Information: Chapter 16-54 WAC, Animal importation.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., First Floor, Conference Room 175, Olympia, WA 98504, on December 8, 2014, at 12:30 p.m.; and at Central Washington University, 400 East University Way, Sue Lombard Hall, Ellensburg, WA 98926, on December 9, 2014, at 11:00 a.m.

Date of Intended Adoption: December 30, 2014.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules Comments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., December 9, 2014.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist by December 1, 2014, TTY (800) 833-6388, or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-54 WAC to:

- Align with a recent federal order on porcine epidemic diarrhea virus;
- Remove certificate of veterinary inspection exemption for horses, goats, sheep, alpacas, and llamas traveling into Washington for round trip visits of no more than four days;
- Allow trichomoniasis samples to be collected and pooled for up to five bulls using qPCR testing;
- Increase the tuberculosis (TB) testing requirement age from six to twelve months on dairy cattle originating from a TB free state; and
- Update definitions and Code of Federal Regulation[s] citations.

Reasons Supporting Proposal: These rule amendments are necessary to prevent the spread of infectious and communicable diseases in Washington livestock, align with neighboring states' regulations, reduce the regulatory burden on industry to facilitate the flow of commerce and update regulations to reflect current federal codes.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

Rule is necessary because of federal law, Title 9 Code of Federal Regulations.

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dr. Paul Kohrs, Olympia, (360) 902-1881; and Enforcement: David Bangart, Olympia, (360) 902-1946.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and therefore a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency in RCW 34.05.328 (5)(a)(i).

October 22, 2014
Lynn M. Briscoe
Assistant Director

AMENDATORY SECTION (Amending WSR 10-20-092, filed 9/30/10, effective 10/31/10)

WAC 16-54-010 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited free state" means a state that has been determined by United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) to have a zero prevalence of cattle and bison herds affected with bovine tuberculosis as listed in Title 9 C.F.R. Part ((~~77.79~~)) 77.7 (January 1, ((~~2006~~)) 2014).

"Approved veterinary laboratory" means a laboratory that has been approved by National Veterinary Services Laboratories or other USDA, APHIS-approved facility.

"Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official form (electronic or paper) from the state of origin or from ((~~APHIS,~~)) USDA, APHIS executed by a licensed and accredited veterinarian or a veterinarian approved by ((~~APHIS,~~)) USDA, APHIS. The certificate of veterinary inspection is also known as an "official health certificate."

"Class free and Class A, B, and C states" means states that are classified for brucellosis by USDA, APHIS in Title 9 C.F.R. Part 78.41 (January 1, ((~~2006~~)) 2014).

"Consigned" means to deliver for custody or sale.

"Dairy cattle" means all cattle, regardless of age or sex or current use, that are of a breed used to produce milk or other dairy products for human consumption including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, and Milking Shorthorn.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of WSDA or the director's authorized representative.

"Domestic bovine" means domesticated cattle, including bison.

"Domestic equine" means horses, donkeys, mules, ponies, and other animals in the *Equidae* family.

"Entry permit" means prior written permission issued by the director to admit or import animals or animal reproductive products into Washington state.

"Exotic animal" means species of animals that are not native to Washington state but exist elsewhere in the world in the wild state.

"Feral swine" means animals included in any of the following categories:

• Animals of the genus *Sus* that are free roaming on public or private lands and do not appear to be domesticated;

• Swine from domesticated stocks that have escaped or been released or born into the wild state;

• European wild hogs and their hybrid forms (also known as European wild boars or razorbacks), regardless of whether they are free roaming or kept in confinement; or

• Animals of the family *Tayassuidae* such as peccaries and javelinas, regardless of whether they are free roaming or kept in confinement.

"Immediate slaughter" means livestock will be delivered to a federally inspected slaughter ((~~plant~~)) facility within twelve hours of entry into Washington state.

"Mature vaccinate" means a female bovine over the age of twelve months that has been vaccinated, under directions issued by the state of origin, with a mature dose of brucellosis vaccine.

"Modified accredited state" means a state that has been determined by USDA, APHIS to have a prevalence of bovine tuberculosis of less than 0.1 percent of the total number of herds of cattle and bison as listed in Title 9 C.F.R. Part 77.11 (January 1, ((~~2006~~)) 2014).

"Movement permit" means an entry permit that is valid for six months and permits the entry of domestic equine into Washington state.

"NPIP" means the National Poultry Improvement Plan.

"Official brucellosis test" means the official test defined by Title 9 C.F.R. Part 78.1 (January 1, ((~~2006~~)) 2014).

"Official brucellosis vaccinate" means an official adult vaccinate or official calfhood vaccinate as defined by Title 9 C.F.R. Part 78.1 (January 1, ((~~2006~~)) 2014).

"Official individual identification" means identifying an animal ((~~or group of animals~~)) using USDA-approved ((~~or WSDA-approved~~)) devices or methods, ((~~including, but not limited to, official tags,~~)) or an alternative form of identification agreed upon by the sending and receiving states, such as unique breed registry tattoos((~~, and registered brands when accompanied by a certificate of inspection from a brand inspection authority who is recognized by the director~~)) when accompanied by registration documentation. A group of animals may be identified by registered brands when accompanied by a certificate of inspection from a brand inspection authority recognized by the director when agreed upon by the sending and receiving states.

"Poultry" means chickens, turkeys, ratites, waterfowl, game birds, pigeons, doves, and other domestic fowl.

"Psittacine" means birds belonging to the family *Psittacidae* including, but not limited to, parrots, macaws, and parakeets.

"Restricted feedlot" means a feedlot holding a permit issued under chapter 16-30 WAC.

"Restricted holding facility" means an isolated area approved and licensed by the director, as advised by the state veterinarian.

"Stage I, II, III, IV, or V pseudorabies state" means states as classified by the Pseudorabies Eradication State-Federal-Industry Program Standards (November 1, 2003).

"USDA, APHIS" means the United States Department of Agriculture Animal and Plant Health Inspection Service.

"Virgin bull" means a sexually intact male bovine less than eight hundred pounds and less than twelve months of age, as determined by dentition inspection by an accredited veterinarian, that is certified by the owner or the owner's designee as having had no breeding contact with female cattle; or bulls that are less than eighteen months of age and have had no breeding contact with female bovines and originate from a herd where all bulls have been tested negative by a quantitative polymerase chain reaction (qPCR) test to trichomoniasis every year for the past three years.

"Wild animals" is defined in RCW 77.08.010(61).

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-028 Testing procedure requirements. (1) An accredited veterinarian or a veterinary technician under the direct supervision of an accredited veterinarian must collect and submit all test specimens.

(2) All livestock regulatory tests must be performed ((~~by a laboratory approved by the National Veterinary Services Laboratories~~)) an approved laboratory.

(a) Official tuberculosis tests must be conducted by a licensed accredited veterinarian.

(b) Technicians employed and approved by state, federal, or tribal government and directly or indirectly supervised by state, federal, or tribal animal health veterinarians may conduct routine surveillance tests.

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-030 Certificate of veterinary inspection, and entry permit requirements. (1) All animals entering Washington state must comply with the requirements of USDA, APHIS regulations found at Title 9 C.F.R. (January 1, 2014) for movement or importation from foreign countries.

(2) **Certificate of veterinary inspection:**

(a) A certificate of veterinary inspection must accompany all animals entering Washington state, except where specifically exempted in Title 9 C.F.R. Part 86 (January 1, 2014) and this chapter. Certificates of veterinary inspection expire thirty days from the date of issuance.

(b) The certificate of veterinary inspection must show that all livestock listed have been examined and found in compliance with vaccination, testing((~~, and Washington animal identification requirements found in chapter 16-610 WAC~~)) and identification requirements under Title 9 C.F.R. Part 86 (January 1, 2014).

(c) Livestock entering Washington state for veterinary care or as part of a veterinary research project where there will be constant veterinary care or supervision for the duration of the time spent in Washington state are exempt from import test requirements and certificate of veterinary inspection requirements. An entry permit is required.

(d) Any exemption to the requirement for a certificate of veterinary inspection may be suspended during an emergency disease condition declared by the director.

(((~~2~~))) (e) Unless an emergency rule is in effect, a certificate of veterinary inspection is not required for domestic bovine that are:

(i) Consigned to federally inspected slaughter facilities for immediate slaughter; or

(ii) Consigned to state-federal approved livestock markets for sale for immediate slaughter only; or

(iii) Consigned to no more than one approved livestock market where import requirements can be met; or

(iv) Consigned to a category 2 restricted holding facility, unless originating from a state or country with less than free status; or

(v) Cattle moving interstate from contiguous states on grazing permits, as long as testing and vaccination requirements are met, as required by each state veterinarian.

(3) **Entry permit:** An entry permit is required on:

(a) All domestic bovine (including Mexican cattle, Canadian cattle, and bison);

(b) Swine;

(c) Rams;

(d) Equine identified on a certificate similar to the Washington Equine Certificate of Veterinary Inspection and Movement Permit (form AGR-3027);

(e) Equine from states or countries where the diseases listed in WAC 16-54-071 have been diagnosed;

(f) Intact male equine that test positive to equine viral arteritis; and

(g) Equine reproductive products from donors that test positive to equine viral arteritis.

(((~~3~~))) (4) Entry permits are granted at the discretion of the director and may be obtained from:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577
360-902-1878.

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-032 Certificate of veterinary inspection—Required information. (1) A certificate of veterinary inspection must meet the requirements in Title 9 C.F.R Part 86 (January 1, 2014) and contain the following information:

(a) An entry permit number, when required((~~, that includes the physical addresses of the premises of origin and destination~~));

(b) Date of inspection;

(c) Names and physical addresses of the consignor and consignee;

(d) Shipment information, including:

(i) Physical addresses of origin and destination of shipment;

(ii) Anticipated shipment date; ((~~and~~))

(iii) Number of animals in the shipment; and

(iv) Purpose for which the animals are to be moved.

(e) Certification that the animals are free from clinical signs or known exposure to any infectious or communicable disease;

(f) Test or vaccination status, when required;

(g) Description of each animal by:

(i) Identifying species;

(ii) Breed;

(iii) Age;

(iv) Sex of the animal;

(v) Color; and

(vi) ((~~Tag, tattoo, microchip, USDA-approved RFID (radio frequency identification device) ear tag, or other~~)) Official ((~~method of~~)) individual identification((~~, including ownership brands~~)).

(2)(a) All certificates of veterinary inspection must be reviewed by the animal health official of the state of origin and a copy must be immediately forwarded within seven calendar days from date of issuance to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577;

(b) By e-mail to ahealth@agr.wa.gov.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-060 Quarantine. Any animal entering Washington state without a required certificate of veterinary inspection, or required entry permit, or that does not meet the requirements of this chapter shall be ((~~quarantined~~)) subject to a quarantine order or a hold order at the owner's expense and subject to any required test, inspection, or vaccination at the owner's expense until released from quarantine by the director.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-065 Prohibited entries. (1) Any animal that is infected with or exposed to any infectious or communicable disease is prohibited from entering Washington state.

(2) Livestock susceptible to vesicular stomatitis that have been ((~~located~~)) in contact with any premises within the past thirty days ((~~within ten miles of any premises~~)) under quarantine or investigation for vesicular stomatitis are prohibited from entering Washington state.

(3) The following animals are prohibited from entering Washington state for any purpose:

(a) Cattle originating from Mexican dairies;

(b) Feral swine;

(c) Domestic swine from herds where brucellosis is known to exist;

(d) Deleterious exotic wildlife, as defined by RCW 77.08.010 and designated at WAC 232-12-017, except as provided in WAC 232-12-017.

(4) The Washington state department of health under WAC ((~~246-100-191 (~~)) 246-100-197 animals, birds, pets((~~—~~)), measures to prevent human disease((~~)~~)), prohibits certain animals including bats, skunks, foxes, raccoons, and coyotes from being imported into Washington state except for exhibition by bona fide public or private zoological parks.

(5) Entry permits allowing bona fide public or private zoological parks to import bats, skunks, foxes, raccoons, and coyotes may be issued by the director in consultation with the secretary of the Washington state department of health.

((~~**Exemptions:**~~

~~(6) Infected or exposed animals destined for immediate slaughter, or with an entry permit to a research facility, or with an entry permit to a veterinary facility for treatment may enter at the discretion of the director.~~))

AMENDATORY SECTION (Amending WSR 10-20-092, filed 9/30/10, effective 10/31/10)

WAC 16-54-068 Restrictions. (1) It is a violation to import animals into Washington state that do not comply with the requirements of this chapter or any other Washington state regulation relating to animal health and care, or to the importation and movement of poultry, hatching eggs, and wildlife.

(2) ((~~All animals entering Washington state must comply with the requirements of USDA, APHIS regulations found at Title 9 C.F.R. for movement or importation from foreign countries.~~

~~(3)~~))(a) Livestock entering Washington state from a state where a reportable disease listed in WAC 16-70-010 has been diagnosed within the past thirty days must be accompanied by a valid entry permit and a certificate of veterinary inspection.

(b) The certificate of veterinary inspection shall also include written verification that the animals have not been exposed to any reportable disease.

(c) In the case of a state where vesicular stomatitis has been diagnosed, the certificate of veterinary inspection for susceptible livestock must be issued within twenty-four hours of shipment to Washington state and must contain:

(i) The temperature reading of each equine at the time of inspection; and

(ii) The following statement written by an accredited veterinarian:

"All animals identified on this certificate have been examined and found to be free from clinical signs of vesicular stomatitis. During the past thirty days, these animals have not been exposed to vesicular stomatitis."

(d) Cattle entering Washington state from a state or a foreign state or province where vesicular stomatitis has been diagnosed must be held at their destination separate and apart from all other cattle for a period of seven days and reexam-

ined by the state veterinarian or designee at the end of that period.

(e) In the case of a state where contagious equine metritis (CEM) has been diagnosed, the certificate of veterinary inspection for equine must contain the following statement: "The equine and equine reproductive products listed in this document have not originated from a premises where *T. equigenitalis* has been isolated during the sixty days immediately preceding importation to Washington or from a location currently under quarantine or investigation for CEM. No female equine in the shipment has been bred naturally to, or inseminated with, semen from an intact male positive for CEM or from an intact male resident upon positive premises or under quarantine or investigation for CEM. The equine showed no clinical signs of CEM on the day of inspection or semen collection."

(((4) Dogs, cats, and ferrets must be accompanied by an entry permit and proof of current rabies vaccination if they originate from a rabies quarantined area.))

AMENDATORY SECTION (Amending WSR 10-13-153, filed 6/23/10, effective 7/24/10)

WAC 16-54-071 Domestic equine and equine reproductive products—Importation requirements. Import health requirements.

(1)(a) In addition to the other requirements of this chapter, all domestic equine and equine reproductive products entering Washington state must be accompanied by a certificate of veterinary inspection.

(b) Equine vaccinated against equine viral arteritis (EVA) must be accompanied by a vaccination certificate.

(c) Reproductive products from donors that test positive for EVA must be accompanied by an application and entry permit.

(d) Domestic equine from the western states of Oregon, Idaho, California, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, and New Mexico may enter Washington state for shows, rides, or other events either with a certificate of veterinary inspection or with a document similar to the Equine Certificate of Veterinary Inspection and Movement Permit. Individual trips cannot exceed ninety days.

(e) An itinerary of interstate travel must be filed with the department within fourteen days of the expiration of the movement permit.

(2) All certificates and forms may be obtained from and sent to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577

((**Exemptions to import health requirements.**

(3) Horses traveling into Washington state with their Oregon or Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.))

Import test requirements.

Equine infectious anemia (EIA).

(((4))) (3) All domestic equine, except foals under six months of age accompanying their negative tested dams, must have a negative test for equine infectious anemia (EIA) within twelve months before entering Washington state.

Exemptions to EIA test requirements.

(((5))) (4) Domestic equine moving to Washington from Idaho or Oregon are excluded from EIA test requirements.

Equine viral arteritis (EVA).

(((6) Intact males over six months of age must test antibody negative for EVA within thirty days before entry into Washington state or have proof of vaccination.

(7) Vaccinated equine that test antibody positive for EVA must be accompanied by a certificate of veterinary inspection that provides proof of:

(a) A prevaccination negative antibody blood test;

(b) Vaccination within ten days of the prevaccination blood test; and

(c) Approved method of animal identification. Approved methods of identification are:

(i) Photograph or clearly drawn picture of the animal (both sides and front);

(ii) Brand (hot iron or freeze brand);

(iii) Microchip; and/or

(iv) Lip tattoo.

(8))) (5) Intact males over six months of age and equine reproductive products from donors that test positive for EVA may enter Washington state only if accompanied by an entry permit and a statement on the certificate of veterinary inspection verifying that the consignee:

(a) Has been advised of the positive antibody test results and the associated risks of EVA infection;

(b) Agrees to follow the recommendations of the Office International des Epizooties of the World Organization of Animal Health regarding EVA and USDA recommendations found in the *Equine Viral Arteritis Uniform Methods and Rules*, effective April 19, 2004; and

(c) Consents to the shipment.

(((9))) (6) Intact males that test antibody positive for EVA are required to have an entry permit and may be subject to quarantine or a hold order.

(((10) Equine semen and embryos require an entry permit and must originate from donors that have proof of vaccination or a negative antibody test for EVA during the current breeding season.

(11) Equine semen and embryos from antibody positive donors must be used or implanted only in vaccinated or seropositive mares. These mares must be isolated for twenty-one days following insemination or implantation.

(12))) (7) Additional testing for EVA may be required during emergency disease conditions declared by the director.

Piroplasmosis.

(((13))) (8) Any equine that has ever tested positive for piroplasmosis may not enter Washington state.

(((14))) (9) Any equine that has originated from a country or state where piroplasmosis is endemic must be negative to a C-ELISA test within thirty days before entry into Washington state, and ((must be quarantined)) are subject to a

quarantine order upon arrival and retested within sixty to ninety days. Horses that test positive on the post-arrival C-ELISA test are not permitted to remain in the state and must be removed.

AMENDATORY SECTION (Amending WSR 10-20-092, filed 9/30/10, effective 10/31/10)

WAC 16-54-082 Domestic bovine animals—Importation requirements. Import health requirements.

(1) Domestic bovine entering Washington state must have a certificate of veterinary inspection and an entry permit issued by the office of the state veterinarian prior to entry. Entry permits are required on all cattle entering the state.

(2) All dairy cattle, regardless of age, require official individual identification unless:

(a) Consigned to federally inspected slaughter facilities for immediate slaughter; or

(b) Consigned to state-federal approved livestock markets for sale for immediate slaughter only.

(3) Before entering Washington state, Canadian cattle, including calves, must be identified on the right hip by a "CAN" brand (C open-A N).

((**~~Exemptions to import health requirements.~~**

~~(3) Unless an emergency rule is in effect, a certificate of veterinary inspection is not required for domestic bovine that are:~~

~~(a) Consigned to federally inspected slaughter plants for immediate slaughter; or~~

~~(b) Consigned to state-federal approved livestock markets for sale for immediate slaughter only; or~~

~~(c) Consigned to specifically approved livestock markets or restricted holding facilities where import requirements can be met; or~~

~~(d) Consigned to a restricted feedlot or a category 2 restricted holding facility, unless originating from a state or country with less than free status; or~~

~~(e) Cattle moving interstate from contiguous states on grazing permits.~~))

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-083 Domestic and foreign bovine brucellosis requirements. (1) Female cattle, domestic and foreign, must have an official calfhood brucellosis vaccination and legible vaccination tattoo before entry into Washington state.

(a) ((~~Cattle vaccinated with strain 19 vaccine must be permanently identified with a tattoo in the right ear that must bear the USDA registered V shield preceded by a number indicating the quarter of the year in which they were vaccinated, followed by the last digit of the year of vaccination.~~

~~(b)~~)) Cattle vaccinated with RB-51 strain of vaccine must be permanently identified with a tattoo in the right ear that must bear the USDA registered V shield preceded by the letter R followed by the last digit of the year of vaccination.

(((~~c~~))) (b) Brucellosis vaccinated cattle from foreign countries must present original vaccination certificates. On arrival, the cattle must be tattooed with the USDA V shield and the year indicated on the vaccination certificate.

(2) ((~~Mature~~)) Adult vaccinated domestic ((~~bovine~~)) cattle that are identified by a legible vaccination tattoo and ((~~USDA vaccination and USDA~~)) official individual identification ((~~tags~~)) will be allowed entry into Washington state if the state of origin allows ((~~mature~~)) adult vaccination and is of the same brucellosis class or higher.

(3)((~~(a)~~)) Test eligible dairy cattle from all states and all beef cattle and bison from ((~~Class A states~~)) USDA-designated zones described in 9 C.F.R. Part 78, Subpart E (January 1, 2014) must be tested negative for bovine brucellosis within thirty days before entry.

(((~~(b) Beef cattle from selected brucellosis free states designated by the director may be required to have a negative test thirty days before entry.~~

~~(c)~~)) Test eligible ((~~bovine~~)) cattle are:

(a) Dairy bulls over six months of age((~~,~~));

(b) Brucellosis vaccinated dairy females over twenty months of age((~~, and~~));

(c) Brucellosis vaccinated beef breed females over twenty-four months of age, when required; and

(d) Beef bulls over six months of age, when required.

(4) Test eligible bison, when required, are:

(a) Bulls over six months of age; and

(b) Nonvaccinated heifers over six months of age.

(((~~4~~))) (5) All animals must be identified ((~~by USDA approved~~)) with official individual identification.

Exemptions to domestic bovine brucellosis test and vaccination requirements.

(((~~5~~))) (6) Domestic bovine that are exempt from brucellosis testing and vaccination requirements are:

(a) Those cattle from a class free state consigned to ((~~restricted feedlots~~)) a category 2 restricted holding facility;

(b) Those consigned to federally inspected slaughter ((~~plants~~)) facilities for immediate slaughter;

(c) Heifer calves less than four months of age;

(d) Designated slaughter ((~~only dairy breed~~)) cattle ((~~from Oregon, Idaho, and Montana~~)) that ((~~are~~)) have been consigned to ((~~a~~)) no more than one state-federal approved livestock market;

(e) Bull calves less than six months of age;

(f) Steers and spayed heifers;

(g) Official brucellosis vaccinated dairy cattle less than twenty months of age;

(h) Official brucellosis vaccinated beef cattle less than twenty-four months of age;

(i) Cattle from a certified brucellosis free herd, as defined by Title 9 C.F.R. Part 78.1 (January 1, 2014); and

(j) Test eligible beef breed cattle and dairy cattle that are consigned to a state or federally approved livestock market to meet entry testing requirements. Heifer calves between four and twelve months of age may be consigned to a state-federal approved sale yard where they will remain until meeting vaccination requirements.

(((~~6~~))) (7) Cattle that have not met the department's brucellosis requirements may enter((~~, with approval from the director,~~)) a category 1 restricted holding facility in Washington state with an entry permit, a certificate of veterinary inspection, and official individual identification when required, until testing and vaccination requirements have been met. The category 1 restricted holding facility must be

approved by the director and operated in accordance with ((~~a written agreement between the facility owner and the director. The restricted holding facility must be maintained and all inspections, testing, and vaccination done at the owner's expense~~)) chapter 16-30 WAC.

AMENDATORY SECTION (Amending WSR 10-20-092, filed 9/30/10, effective 10/31/10)

WAC 16-54-085 Bovine tuberculosis requirements. (1) Dairy cattle (including steers and spayed heifers) twelve months of age or older and originating from a tuberculosis free state must test negative for bovine tuberculosis within sixty days before entering Washington state.

(2) All ((~~domestic bovine~~)) dairy cattle and beef cattle six months of age or older must have a negative bovine tuberculosis (TB) test within sixty days before entry into Washington state and must be officially individually identified ((~~with a USDA silver identification ear tag, or a USDA approved RFID tag, or an orange brucellosis vaccination tag~~)) when:

(a) Originating from a state or country where ((~~a~~)) there is an active epidemiological investigation related to bovine infected with tuberculosis ((~~affected herd has been identified~~)) within the past ((~~twelve~~)) twenty-four months;

(b) ((~~Originating from a state or country where there is an ongoing epidemiological investigation related to bovine infected with tuberculosis;~~

~~(c)~~)) Originating from a state or country where tuberculosis is endemic or present in wildlife populations; or

(((~~d~~))) (c) Originating from a modified accredited advanced or lower state as defined by USDA, APHIS in Title 9 C.F.R.((~~, Chapter 1,~~)) Part 77 (January 1, ((~~2010~~)) 2014) or a country equivalent in status. Such domestic bovine shall be held separate and apart from native cattle for sixty days and retested negative at least sixty days after entry into Washington state.

(((~~(2) **Dairy cattle (including steers and spayed heifers) six months of age or older** must:~~

~~(a) Test negative for bovine tuberculosis within sixty days before entering Washington state; and~~

~~(b) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.~~

~~(3) **Dairy heifers, steers, and bull calves less than six months of age** must:~~

~~(a) Be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility;~~

~~(b) Be held separate and apart from all other domestic bovine until they test negative for bovine tuberculosis after six months of age; and~~

~~(c) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.~~

~~(4)~~)) (3) Dairy cattle are exempt from bovine tuberculosis testing requirements of subsections (((~~(2)~~))) (1) and (((~~(3)~~))) (2) of this section if they:

(a) Originate from an accredited bovine tuberculosis-free herd, as defined by USDA, APHIS in Title 9 C.F.R.((~~, Chapter 1,~~)) Part 77 (January 1, ((~~2010~~)) 2014), and if an accredited herd number and the date of the last bovine tuberculosis test are shown on the certificate of veterinary inspection;

(b) Are consigned to federally inspected slaughter ((~~plants~~)) facilities for immediate slaughter;

(c) Are consigned to slaughter through state and federally approved public livestock markets and remain in slaughter channels; or

(d) Enter a category 2 restricted holding facility (restricted feedlot) to be fed for slaughter.

(((~~(5)~~))) (4) **Cattle used for rodeo or timed events.**

(a) All cattle used for rodeo or timed events((~~,~~)) except those imported directly from Mexico, must be accompanied by proof recorded on a certificate of veterinary inspection of a negative bovine tuberculosis test within twelve months before entry into Washington state.

(b) Calves under six months old that were born and have continuously resided in the state of Washington are excluded from this requirement.

(((~~(6)~~))) (5) **Mexican cattle** - All cattle imported from Mexico that enter Washington, including those imported for rodeo or recreation purposes, must be sexually neutered and must bear official individual Mexican identification and ((~~brand~~)) "M" branded before entry.

(a) All Mexican cattle must be accompanied by proof of two negative bovine tuberculosis tests conducted in the United States after entry from Mexico. The second negative test must be a minimum of sixty days after the first test and within thirty days before entry into Washington state.

(b) All Mexican cattle that remain in the state of Washington shall be tested annually for tuberculosis.

(c) If Mexican cattle entering Washington state are not accompanied by proof of two negative bovine tuberculosis tests prior to entry, they will be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility and kept separate and apart from Washington cattle until the completion of required tests.

(d) Sexually intact Mexican beef cattle may enter only with a prior entry permit and at the discretion of the director.

(e) Mexican cattle are exempt from the second bovine tuberculosis test and isolation requirements if their official individual Mexican identification remains intact and they are consigned to a federally inspected slaughter ((~~plant~~)) facility for immediate slaughter.

(((~~(7)~~))) (6)(a) Cattle that have not met the tuberculosis requirements in this subsection may enter, with approval from the director, a category 1 restricted holding facility in Washington state until testing requirements have been met.

(b) The category 1 restricted holding facility must be approved by the director and operated in accordance with a written agreement between the facility owner and the director.

(c) The restricted holding facility must be maintained and all inspections and testing done at the owner's expense.

AMENDATORY SECTION (Amending WSR 10-20-092, filed 9/30/10, effective 10/31/10)

WAC 16-54-086 Bovine trichomoniasis requirements. (1) **((~~Breeding~~)) Bulls** (except bison) may be

imported into the state of Washington if they meet the following requirements:

(a) The bulls originate from a herd wherein all bulls have tested negative for bovine trichomoniasis since they were removed from female cattle; or

(b) The bulls have tested negative to a bovine trichomoniasis quantitative polymerase chain reaction (qPCR) test within ((~~thirty~~)) sixty days before import and have had no contact with female cattle from the time of the test to the time of import; or

(c) ((~~The bulls have tested negative to a bovine trichomoniasis culture test, if from a state that recognizes a culture test as an official test~~)) Rodeo bulls for timed events and bucking bulls have tested negative for bovine trichomoniasis within the past twelve months and have a statement on the certificate of veterinary inspection certifying that the bulls have had no female breeding contact; or

(d) If the bulls originate from a herd where one or more bulls or cows have been found infected with bovine trichomoniasis **within the past twelve months,** the bulls must have two negative qPCR tests one week apart. The samples for each test must be collected within thirty days before cattle are imported into Washington state, and an import permit must be obtained from the director and include a certifying statement that the bulls originated from an infected herd.

(2) Laboratory pooled qPCR samples collected from up to five bulls will be accepted if the following conditions are met:

(a) Bulls are twelve months of age and older that cannot be designated as virgin bulls and have had no breeding contact with females;

(b) Bulls originate from a herd where there is no history of trichomoniasis infection, and are part of a single herd, not assembled cattle; and

(c) Bulls are sampled for a herd diagnostic test without regulatory implications or are part of a disease investigation.

(3) Before arrival at their destination in Washington state, all imported bulls must be identified with official identification or an official trichomoniasis bangle tag.

(((~~3~~))) (4) Bulls that enter Washington state without meeting the bovine trichomoniasis requirements of this section will be ((~~quarantined~~)) subject to a quarantine order or a hold order at the owner's expense until they have had two negative qPCR tests one week apart.

(((~~4~~))) (5)(a) Any bull or cow that is positive to a trichomoniasis test, and any herd in which one or more bulls or cows are found infected with trichomoniasis is considered infected.

(b) In the case of bulls testing positive to trichomoniasis, the herd shall be ((~~quarantined~~)) subject to a quarantine order or a hold order pending an epidemiological investigation to determine the source of the infection, and as long as infection persists in the herd.

(c) Infected bulls will be ((~~quarantined~~)) subject to a quarantine order or a hold order and will not be used for breeding. They must be slaughtered, sold for slaughter, or sent to a restricted feedlot or category 2 restricted holding facility to remain in slaughter channels.

(((~~5~~))) (6) **Certification and proficiency testing and types of tests.** The state veterinarian will determine trichomoniasis training for veterinarians and laboratories, and the types of tests used to determine trichomoniasis infection. All sampling will be obtained by pipette scrapings from the prepuce and glans of a bull.

(a) All trichomoniasis testing of bulls in Washington state shall be performed by a veterinarian accredited by the ((~~United States Department of Agriculture, Animal and Plant Health Inspection Service (~~))USDA APHIS((~~)~~)). In addition, all accredited veterinarians testing bulls in Washington state for trichomoniasis are required to successfully complete training and pass a trichomoniasis testing procedure proficiency examination provided by the department. Effective January 1, 2011, accredited veterinarians may not perform official trichomoniasis testing of bulls in Washington state until they have successfully completed the training and passed the proficiency examination.

A schedule of training opportunities is available by contacting the department at:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
360-902-1878

(b) Registered veterinarians shall only utilize official laboratories recognized by the state veterinarian for testing of trichomoniasis samples.

(c) Registered veterinarians collecting samples in the state of Washington shall submit results of all trichomoniasis tests and all official identification on official trichomoniasis test and report forms to the animal services division within five business days of receiving test results from an ((~~official~~)) approved laboratory or identifying virgin bulls with official trichomoniasis bangle tags.

(d)(i) Polymerase chain reaction is accepted as an official test when completed by ((~~a qualified~~)) an approved laboratory ((~~approved by the director~~)) and when the sample is received by the laboratory within forty-eight hours of collection.

(ii) Other tests for trichomoniasis may be approved as official tests by the state veterinarian after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

(iii) An official test is one in which the sample is received in the ((~~official~~)) approved laboratory in good condition within forty-eight hours of collection. Samples in transit for more than forty-eight hours will not be accepted for official testing and must be discarded. Samples that have been frozen or exposed to high temperatures must also be discarded.

Exemptions to bovine trichomoniasis test requirements.

(((~~6~~))) (7) **Virgin bulls** are exempt from bovine trichomoniasis test requirements. If sold, virgin bulls must be officially identified and accompanied by a certificate signed by the owner or the owner's designee that they have had no breeding contact with female cattle. "Virgin bull" means a sexually intact male bovine less than eight hundred pounds and less than twelve months of age, as determined by denti-

tion inspection by an accredited veterinarian, that is certified by the owner or the owner's designee as having had no breeding contact with female cattle; or bulls that are less than eighteen months of age and have had no breeding contact with female bovines and originate from a herd where all bulls have been tested negative, by a quantitative polymerase chain reaction (qPCR) test, to trichomoniasis for the past three years.

AMENDATORY SECTION (Amending WSR 10-13-153, filed 6/23/10, effective 7/24/10)

WAC 16-54-090 Goats—Importation and testing requirements. Import health requirements.

(1) All goats entering Washington state must be accompanied by a certificate of veterinary inspection. The certificate of veterinary inspection must state that the goats are free from clinical signs or known exposure to any infectious or communicable disease including, but not limited to, footrot, sore mouth, and caseous lymphadenitis.

(2) Female dairy goats six months of age or older must test negative for brucellosis and tuberculosis within thirty days before they enter Washington state.

(3) Sexually intact goats must have official ((~~USDA scrapie~~)) individual identification.

Exemption to import health requirements.

(4) ((~~Goats traveling into Washington state with their Oregon and Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection~~)) Dairy goats entering Washington for show or exhibition purposes and returning to their home state are exempt from testing requirements. A certificate of veterinary inspection is required.

(5) Goats entering Washington state for immediate slaughter at a USDA inspected slaughter facility are exempt from the certificate of veterinary inspection and testing requirements.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-101 Sheep—Importation and testing requirements. Import health requirements.

(1) A certificate of veterinary inspection must accompany all sheep entering Washington state. The certificate of veterinary inspection must state that the sheep:

(a) Are clinically free from the signs of infectious diseases, including footrot, sore mouth, and caseous lymphadenitis; and

(b) Originated from a flock in which scrapie has not been diagnosed in the past five years or are from a flock enrolled in the USDA Voluntary Scrapie Flock Certification Program described in Title 9 C.F.R. Part 54 (January 1, ((~~2006~~)) 2014).

(c) Are officially identified with official ((~~USDA scrapie program~~)) individual identification. Sheep required to be officially individually identified include:

(i) All breeding sheep;

(ii) All sexually intact sheep imported for exhibition;

(iii) All sheep over eighteen months of age.

Import test requirements.

(2) All breeding rams over six months of age require an entry permit.

(3) The certificate of veterinary inspection must state that the rams:

(a) Tested negative on an ELISA test for *Brucella ovis* within thirty days before entering Washington state; and

(b) Are palpated and certified free of any evidence of ((~~epiditymitis~~)) epididymitis; and

(c) Are individually identified with an official ((~~USDA scrapie program~~)) individual identification. Each ram's official individual identification number, test results, and the date of the test must be entered on the certificate of veterinary inspection accompanying the animal.

(4) Any purebred rams of Suffolk, Hampshire, Shropshire, Southdown or Montadale descent, or cross thereof; any nonpurebred rams known to have Suffolk, Hampshire, Shropshire, Southdown or Montadale ancestors; and any nonpurebred rams of unknown ancestry with a black face, except for hair sheep, may enter Washington state for breeding purposes if they are determined by genetic testing before entry to be QR or RR at the 171 codon. Hair sheep known to have Suffolk, Hampshire, Shropshire, Southdown or Montadale ancestors are considered blackface sheep.

Exemptions to import health and test requirements.

(5) Sheep ((~~traveling into Washington state with their Oregon and Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the~~)) entering Washington for show or exhibition purposes and returning to their home state are exempt from testing requirements. A certificate of veterinary inspection is required.

(6) Sheep entering Washington state for immediate slaughter at a ((~~USDA~~)) federally inspected slaughter ((~~plant~~)) facility are exempt from the certificate of veterinary inspection and testing requirements.

(7) Official ((~~USDA approved scrapie~~)) individual identification is not required on slaughter sheep less than eighteen months of age.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-105 Llamas and alpacas. Import health requirements.

((~~(1)~~)) All llamas and alpacas imported into Washington state shall be accompanied by a health certificate stating that the animals are free from signs of or exposure to infectious or communicable disease.

((~~**Exemptions to import health requirements.**~~

~~(2) Llamas and alpacas traveling into Washington state with their Oregon and Idaho owners in private conveyance for round trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.~~))

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-111 Swine—Importation and testing requirements. Import health requirements.

(1) All swine entering Washington state must be accompanied by an entry permit, a certificate of veterinary inspection, and official ((~~USDA approved~~)) individual identification.

(2) The certificate of veterinary inspection must contain the following certification: "To the best of my knowledge, swine represented on this certificate have not originated from a premises known to be affected by Porcine Epidemic Diarrhea virus (PEDv), and have not been exposed to PEDv within the last 30 days." The certification must be signed by both the owner of the swine and the certifying veterinarian.

(3) Feral swine are prohibited in Washington state.

Import test requirements.

(((~~3~~))) (4) **Brucellosis.** All intact male and intact female swine more than six months of age must be tested negative for brucellosis within thirty days before entering Washington state or must originate from a USDA validated brucellosis free herd or state (Swine Brucellosis Control/Eradication State-Federal-Industry Uniform Methods and Rules, April((~~,~~)) 1998).

(((~~4~~))) (5) **Pseudorabies.** No test is required from states recognized as Stage IV or Stage V by Pseudorabies Eradication State-Federal-Industry Program Standards, November 1, 2003.

(((~~5~~))) (6) A negative pseudorabies test within thirty days before entry is required for swine from any state or area that loses Stage IV or Stage V status.

Exemptions to import test requirements.

(((~~6~~))) (7) Swine shipped directly to a federally inspected slaughter ((~~plant~~)) facility for immediate slaughter are exempt from testing requirements.

Swine semen and embryos.

(((~~7~~))) (8)(a) Swine semen and swine embryos entering Washington state for insemination of swine or implantation into swine shall be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian stating that the donor swine are not known to be infected with or exposed to pseudorabies, were negative to an official pseudorabies serologic test within thirty days prior to the collection of the semen or embryos or were members of a qualified pseudorabies negative herd, and had not been exposed to pseudorabies within thirty days prior to the collection of the semen or embryos.

(b) Brucellosis testing is not required on donor swine from brucellosis validated free states.

(c) Pseudorabies testing is not required on donor swine from pseudorabies Stage IV or Stage V states.

AMENDATORY SECTION (Amending WSR 10-13-153, filed 6/23/10, effective 7/24/10)

WAC 16-54-145 Poultry and game birds, including ratites—Importation and testing requirements. Import health requirements.

(1) All poultry, excluding doves and pigeons, imported into Washington state must be accompanied by a:

(a) Certificate of veterinary inspection; or

(b) USDA NPIP VS form 9-3 (Report of Sales of Hatching Eggs, Chicks, and Poults); or

(c) USDA VS form 17-6 (Certificate for Poultry or Hatching Eggs for Export).

(2) The certificate of veterinary inspection and the USDA VS form 17-6 must include either the NPIP number or negative results of the required tests.

(3) Poultry or hatching eggs must originate from flocks or areas not under state or federal restriction.

(4) Each ratite entering Washington state must be permanently identified with ((~~USDA approved~~)) official individual identification. The type of official individual identification must be listed on the certificate of veterinary inspection.

Import test requirements.

(5) Poultry, poults, and eggs, excluding doves and pigeons, that originate from flocks or hatcheries that have a pullorum-typhoid clean rating given by the state animal health official or are from an NPIP participant flock must meet the classification requirements stated in subsection (8) of this section.

(6) If poultry do not originate from an NPIP participant flock, they must test negative for the diseases listed in subsection (8) of this section thirty days before entry into the state of Washington.

(7) If hatching eggs are from non-NPIP participant flocks, then the parent breeder flock must be tested for the diseases in subsection (8) of this section within thirty days before the hatching eggs enter the state of Washington.

(8) Poultry, excluding doves and pigeons, must have a negative test for the following diseases:

Disease control classifications	Poultry type			
	Egg-type chickens	Meat-type chickens	Turkeys	Other[1]
Pullorum-typhoid	YES	YES	YES	YES[2]
Avian influenza	YES	YES	YES	YES
Mycoplasma gallisepticum	-	-	YES	-
Mycoplasma synoviae	-	-	YES	-
Salmonella enteritidis	YES (commercial)[3]	-	-	-

[1]Waterfowl, hobby, fancy, exhibition chickens, game birds, ratites, and backyard flocks.

[2]Excluding waterfowl.

[3]Commercial means producers with three thousand or more birds regardless of shipment size.

Exemptions to import health requirements.

(9) Doves, pigeons, waterfowl, game birds, and poultry destined for immediate slaughter are exempt from the certificate of veterinary inspection and testing requirements.

AMENDATORY SECTION (Amending WSR 10-13-153, filed 6/23/10, effective 7/24/10)

WAC 16-54-160 Birds other than poultry, including ((~~exotic~~)) psittacine birds—Importation and testing requirements. Import health requirements.

(1) All birds other than poultry entering Washington state require a certificate of veterinary inspection that contains the following statement:

"To the best of my knowledge, the birds listed on this certificate are not infected with exotic Newcastle disease, psittacosis, or avian influenza and have been free from clinical signs of or known exposure to infectious or communicable disease during the past thirty days."

(2) All birds must be individually identified with a numbered leg band or in a manner appropriate to the species.

((~~**Exemptions to import health requirements.**~~

~~(3) Family pet birds are exempt from the certificate of veterinary inspection and identification requirements if they:~~

~~(a) Are two or less in number; and~~

~~(b) Have not been purchased within thirty days of entry into Washington state; and~~

~~(c) Are traveling by private conveyance with their owners.~~))

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-170 Dogs, cats, and ferrets—Importation and testing requirements. ((~~**Import health requirements.**~~)) (1) Dogs, cats, or ferrets entering Washington state require a certificate of veterinary inspection.

(2) The certificate of veterinary inspection for dogs, cats, or ferrets must identify each animal and certify that each animal at the time of entry is current on rabies vaccination according to the manufacturer's label, and does not originate from an area under quarantine for rabies.

(3) Dogs six months of age or older must be tested negative for heartworm or are currently on a heartworm preventative.

Exemptions to import health requirements.

(((~~(3)~~))) (4) Dogs, cats, or ferrets less than ninety days of age do not require a rabies vaccination.

(((~~(4)~~))) (5) Dogs and cats that originate in Washington state and visit Canada for thirty days or less are exempt from a certificate of veterinary inspection.

(((~~(5)~~))) (6) Dogs, cats, or ferrets that are family pets and have current rabies vaccination certificates and are traveling by private conveyance with their owners are exempt from a certificate of veterinary inspection.

((~~**Import test requirements.**~~

~~(6) The director may require dogs six months of age or older to be tested negative for heartworm.~~))

Exemptions to import test requirements.

(7) Dogs that ((~~are family pets,~~)) have been owned by the same owner for more than one month((~~,~~)) prior to entering the state, and are not going to be sold or have a change of ownership, and are traveling by private conveyance with their owner ((~~or handler~~)) are exempt from the heartworm test requirement.

AMENDATORY SECTION (Amending WSR 10-13-153, filed 6/23/10, effective 7/24/10)

WAC 16-54-180 Wild and exotic animals—Importation and testing requirements. Import health requirements.

(1) Wild and exotic animals entering Washington state must be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian licensed in the state of origin, or accompanied by an international certificate of health.

(2) All wild and exotic animals must be accompanied by an entry permit.

Import test requirements.

(3) **Brucellosis:** Within thirty days before entering Washington state, negative serologic testing must be conducted on the following categories of captive wild or exotic animals that are more than six months of age:

Table 1.

Wild and exotic animals that must be tested for brucellosis

Tested For	Species Scientific Name	Common Name Examples
Brucella abortus	*Camelidae*	• Vicuna • Guanaco
	Cervidae	• Elk • Caribou • Moose • Reindeer • Deer
	Giraffidae	• Giraffe • Okapi
	Bovidae	((~~• Antelope~~)) • Wild cattle (gaur, banteng, kaupre, yak) • Bison (American bison, European bison) • Buffalo (Asian water buffalo, tamaraw, lowland anoa, mountain anoa, African buffalo)

Tested For	Species Scientific Name	Common Name Examples
	Ovidae, Capridae	• Wild sheep (bighorn sheep, Dall's sheep, mouflon, argoli, uriol, blue sheep, barbary sheep, red sheep) • Wild goats (Rocky Mountain goat, ibex, walia ibex, west Caucasian tur, east Caucasian tur, Spanish ibex, markhor)
Brucella suis	*Suidae*	• Wild swine (European wild boar, bearded pig, Jovan pig, pygmy hog, wart hog, giant forest pig, East Indian swine or Babirusa, African bush pig, peccaries)
Brucella suis biovar 4	Cervidae	• Caribou • Reindeer
Brucella ovis	*Ovidae, Capridae*	• All wild sheep and goats must be tested and found negative to *Brucella ovis* within thirty days before entering Washington state

(4) **Tuberculosis** (*Mycobacterium bovis* and *Mycobacterium tuberculosis*):

(a) Animals less than six months of age that are nursing negative tested dams may be excluded from tuberculosis test requirements.

(b) Within thirty days before entering Washington state, the animals listed in the following table must test negative for *M. bovis* and *M. tuberculosis* by a skin test or other approved test that follows federal tuberculosis protocols:

Table 2.
Wild and exotic animals that must be tested for tuberculosis

Species Scientific Name	Common Name Examples
Ceropithecidae	• Old world primates
Elephantidae	• Elephants[1]
Hylobotidae	• Gibbons • Lessor apes
Pongidae	• Great apes
Bovidae	((~~• Antelope~~)) • Wild cattle
Ovidae, Capridae	• Wild sheep • Wild goats
Cervidae, Giraffidae	• Elk • Caribou • Moose • Reindeer • Deer • Giraffe • Okapi

[1]Negative trunk wash or other USDA-validated tuberculosis test every twelve months.

(c) *Cervidae*, such as elk, deer, caribou, moose, and reindeer and *Giraffidae*, such as giraffe and okapi, must be from herds not known to be infected with, exposed to, or affected by tuberculosis. They must also test negative for *M. bovis* using the testing requirements defined in Title 9 C.F.R. Part 77.33 (January 1, ((~~2006~~)) 2014).

(d) For all captive wild or exotic animals not listed in Table 2 in subsection (2)(b) of this section, the following statement signed by the animal's owner or agent must be placed on the official certificate of veterinary inspection:

"To my knowledge, the animals listed on this certificate are not infected with tuberculosis and have not been exposed to animals infected with tuberculosis during the past twelve months."

(5) **Pseudorabies:** All wild swine imported for zoos, exhibitions or to a research facility must test negative for pseudorabies no more than thirty days before entry into Washington state and must be held in quarantine for thirty to sixty days pending a postentry retest.

(6) **Equine infectious anemia:** All wild horses, donkeys, and hybrids of the family *Equidae* must test negative on an approved test for equine infectious anemia no more than six months before entry into Washington state.

(7) **Elaphostrongylinae** (*Parelophostrongylus tenvis* (meningeal worm) and *Elaphostrongylus cervis* (muscle worm)): Before entering Washington state, all *Cervidae* must be examined for *Elaphostrongylinae* infection in the absence of anthelminthic treatment that could mask detection of the parasite.

(a) **All *Cervidae* residing for at least six months** west of a line through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas or geographical boundaries as otherwise designated by the state veterinarian must have a negative fecal exam for dorsal-spined larvae made by an approved laboratory using the Baermann technique. Animals must be certified that they have not been treated with or exposed to anthelminthics for at least thirty days before testing.

(b) **All *Cervidae* residing for less than six months** west of a line through the eastern boundaries of North Dakota,

South Dakota, Nebraska, Kansas, Oklahoma, and Texas or geographical boundaries as otherwise designated by the state veterinarian or from east of that line must be held in a preentry quarantine for thirty to sixty days and have two fecal tests for dorsal-spined larvae made by an approved laboratory using the Baermann technique.

(i) The first test must be conducted at least thirty days and not more than forty days before the second test.

(ii) Fecal samples of at least thirty grams per sample are to be collected by an accredited veterinarian from the animal's rectum and identified by the animal's official identification number.

(iii) During the thirty-day testing period, test animals must be held in quarantine and isolated from all other *Cervidae* not included in the shipment.

(iv) If any animal tests positive to either of the two fecal tests, neither that animal nor any other animal held in quarantine with the infected animal may be imported into Washington state.

(c) All imported *Cervidae* must be held for one hundred eighty days in an ((~~onsite~~)) on-site quarantine and be available for inspection by the director during this time.

(d) Every thirty, sixty, ninety, one hundred twenty, one hundred fifty, and one hundred eighty days after arrival, fecal samples from the animals must be tested by the Baermann technique in an approved laboratory and be found negative for dorsal-spined larvae. Animals that test positive for dorsal-spined larvae must either be removed from Washington state or destroyed.

(e) To prevent the presence of the gastropod intermediate hosts of *Elaphostrongylinae* larvae, the quarantine site must be prepared and inspected before the imported animals enter. Preparation includes:

(i) Providing a hard surface, such as asphalt or concrete, on which to keep the animals;

(ii) Spraying the quarantine area with an EPA-registered molluscicide; and

(iii) Spraying a four-meter wide tract around the perimeter of the holding compound with an EPA-registered molluscicide. This perimeter tract must be treated once every five days and within twenty-four hours of precipitation (10 mm or more) to ensure that the gastropod population is kept to zero within the compound.

(8) **Rabies:** Any carnivorous mammal taken from the wild is prohibited from entering Washington state if rabies has been diagnosed in the state of origin during the past twelve months.

WSR 14-21-163
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed October 22, 2014, 8:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-135.

Title of Rule and Other Identifying Information: Chapter 16-86 WAC, Cattle and bison diseases in Washington state.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., First Floor, Conference Room 175, Olympia, WA 98504, on December 8, 2014, at 12:30 p.m.; and at Central Washington University, 400 East University Way, Sue Lombard Hall, Ellensburg, WA 98926, on December 9, 2014, at 11:00 a.m.

Date of Intended Adoption: December 30, 2014.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules Comments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., December 9, 2014.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist by December 1, 2014, TTY (800) 833-6388, or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-86 WAC to:

- Allow pooling of trichomoniasis samples and extend the date for a valid test from the present thirty to sixty days with a no female contact statement on the certificate of veterinary inspection;
- Modify the virgin bull definition;
- Modify the official individual identification definition;
- Increase the bovine tuberculosis testing requirement from thirty to sixty days for raw milk dairies who introduce new animals into their herd; and
- Add castration to the list of options for bulls of unknown origin or unknown breeding history that are offered for sale at a livestock market.

Reasons Supporting Proposal: These rule amendments are necessary to prevent the spread of infectious and communicable diseases in Washington livestock, align with neighboring states' regulations, and reduce the regulatory burden on industry to facilitate the flow of commerce.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dr. Paul Kohrs, Olympia, (360) 902-1881; and Enforcement: David Bangart, Olympia, (360) 902-1946.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and therefore a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency in RCW 34.05.328 (5)(a)(i).

October 22, 2014
Lynn M. Briscoe
Assistant Director

AMENDATORY SECTION (Amending WSR 12-21-009, filed 10/5/12, effective 11/5/12)

WAC 16-86-005 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited veterinarian" means a veterinarian licensed to practice veterinary medicine, surgery, and dentistry in the state of Washington and approved by the United States Department of Agriculture (USDA) Veterinary Services to participate in state-federal cooperative programs.

"Adult vaccination tattoo" means a tattoo in the right ear with the letters RAV followed by the last digit of the year in which the vaccination was administered with RB-51 *Brucella* vaccine. An example is RAV2 for an adult vaccinated in 2012.

"Breed registry tattoo" means individual registry tattoos issued by breed associations.

"Brucellosis vaccine" means only those *Brucella abortus* products that are approved by and produced under license of the USDA for injection into cattle to enhance their resistance to brucellosis.

"Calfhood vaccination tattoo" means a tattoo in the right ear consisting of an R, the United States registered V-shield, and the last digit of the year in which the animal was vaccinated with RB-51 *Brucella* vaccine. An example is RV-shield2 for a calf vaccinated in 2012.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of WSDA or the director's authorized representative.

"Herd plan" means a written management agreement between the animal owner and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner, in which each participant agrees to undertake actions specified in the herd plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd and to work toward eradicating the disease in the infected herd.

"Official calfhood vaccinate" means female cattle between four and twelve months of age that are vaccinated with brucellosis vaccine at a calfhood dose (2cc subcutaneously) and officially individually identified.

"Official individual identification" means identifying an animal ((~~or group of animals~~)) using USDA-approved ((~~or WSDA approved~~)) devices or methods ((~~including, but not limited to, official tags,~~)) or an alternative form of identification agreed upon by the sending and receiving states, such as unique breed registry tattoos((~~, and~~)) when accompanied by registration documentation. A group of animals may be identified by registered brands when accompanied by a certificate of inspection from a brand inspection authority ((~~who is~~)) recognized by the director((~~. If a radio frequency identification device is used for identification, the device must be placed in the left ear. The official tattoo must be placed in the middle third of the right ear~~)) when agreed upon by the sending and receiving states.

"Official Washington adult vaccinate" means female cattle over the age of twelve months that have resided in Washington state for ninety days or more and are vaccinated with a dose of brucellosis vaccine (2cc subcutaneously) under directions issued by the director.

"Premises" means a location where livestock are kept.

"Timed events" means competitive events that take place where time elapsed is the factor that determines the placing of individuals competing in the event.

"USDA" means the United States Department of Agriculture.

"Virgin bull" means a sexually intact male bovine less than eight hundred pounds and less than twelve months of age, as determined by dentition inspection by an accredited veterinarian((~~. Virgin bulls must be certified by the owner or the owner's designee with a signed statement as having had no breeding contact with female cattle~~)), that is certified by the owner or the owner's designee as having had no breeding contact with female cattle; or bulls that are less than eighteen months of age and have had no breeding contact with female bovines and originate from a herd where all bulls have been tested negative by a quantitative polymerase chain reaction (qPCR) test to trichomoniasis every year for the past three years.

AMENDATORY SECTION (Amending WSR 10-20-093, filed 9/30/10, effective 10/31/10)

WAC 16-86-115 Trichomoniasis in Washington cattle. (1) Any sexually intact bovine, except for bison, that is found test-positive for trichomoniasis, and any herd in which one or more bulls or cows are found test-positive for trichomoniasis, is considered infected. Test-positive means a positive result on a quantitative polymerase chain reaction (qPCR) test for trichomoniasis.

(2) In the case of infected sexually intact bovine, the herd shall be quarantined pending an epidemiological investigation to determine the source of the infection.

(3) All exposed herds will be identified by an accredited veterinarian in conjunction with the department. An exposed herd is defined as a cattle herd which has had, within the past twelve months, direct commingling or cross-fence contact with an infected herd during a time of potential breeding activity. The owner of exposed herds will be notified of the possible exposure and requested to test the herd using a qPCR test. All testing will be at the owner's expense.

(4)(a) Infected bulls will be quarantined and branded high on the tail head by the department with a USDA regulatory S-brand, and will not be used for breeding.

(b) Infected bulls must be slaughtered, sold for slaughter, sent to a restricted feedlot, or to a category 2 restricted holding facility to remain in slaughter channels. Infected bulls shall only be moved when accompanied by a USDA form VS 1-27.

(c) Bulls of unknown origin or unknown breeding history offered for sale at a livestock market must be:

(i) Castrated prior to leaving the market; or

(ii) Tested negative for trichomoniasis by a qPCR test before being turned out with breeding stock; or ((~~must be~~))

(iii) Sold for slaughter((~~,~~)); or

(iv) Sent to ((~~a restricted feedlot, or to~~)) a category 2 restricted holding facility to remain in slaughter channels.

(d) A nonpregnant female, with no calf at side, which is identified by the owner as being from an infected herd and is offered for sale at a livestock market, must remain in slaughter channels.

(5) The quarantine will be removed when all remaining bulls in the herd test negative to a second qPCR test for trichomoniasis and following proof of removal of infected bulls. Bulls must have a minimum of two negative qPCR tests at least one week apart for quarantine release. All bulls from infected herds, except virgin bulls, will be tested using a qPCR test the following trich-year before breeding. A trich-year means the period from September 1st to August 31st of any given year. Bulls from infected herds may not have to be tested the following trich-year if a herd plan has been approved by the state veterinarian.

(6) Information that cattle have tested positive for trichomoniasis may be supplied to county extension agents, accredited veterinarians, and industry representatives. Each month, the department may publish a press release of counties that have infected herds.

AMENDATORY SECTION (Amending WSR 08-01-094, filed 12/17/07, effective 1/17/08)

WAC 16-86-140 Tuberculosis testing requirements for raw milk dairies. (1) All cattle whose raw milk or raw milk products are offered for sale must be from a herd that has tested negative for tuberculosis within the previous twelve months.

(2) Any additions to the herd must be tested negative for tuberculosis at the owner's expense within ((~~thirty~~)) sixty days before introduction into the herd.

(3) Herds must be tested negative annually at the owner's expense to maintain the dairy's raw milk license.

(4) The state veterinarian shall direct all testing procedures in accordance with state and federal standards for animal disease eradication.

(5) All raw milk and raw milk products from animals that test positive for tuberculosis are prohibited from sale and must be destroyed.

WSR 14-21-164
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed October 22, 2014, 8:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-134.

Title of Rule and Other Identifying Information: Chapter 16-70 WAC, Animal diseases—Reporting.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., First Floor, Conference Room 175, Olympia, WA 98504, on December 8, 2014, at 12:30 p.m.; and at Central Washington University, 400 East University Way, Sue Lombard Hall, Ellensburg, WA 98926, on December 9, 2014, at 11:00 a.m.

Date of Intended Adoption: December 30, 2014.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules Comments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., December 9, 2014.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist by December 1, 2014, TTY (800) 833-6388, or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-70 WAC to add porcine epidemic diarrhea virus (PEDv) and coccidioidomycosis to the monthly reporting requirements and remove infectious bovine rhinotracheitis.

Reasons Supporting Proposal: PEDv was first diagnosed in the United States in May of 2013. Since then it has spread to twenty-four states and has killed as [an] estimated four to seven million suckling piglets. To assist in the control and eradication of a PEDv outbreak in Washington this virus is being added to the list of animal diseases that must be reported by producers, veterinarians, and laboratories. Coccidioidomycosis is being added to the list of reportable diseases at the request of public health as the disease was recently discovered in Washington. Infectious bovine rhinotracheitis is being removed from the reporting requirements as it is endemic and very common.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dr. Paul Kohrs, Olympia, (360) 902-1881; and Enforcement: David Bangart, Olympia, (360) 902-1946.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and therefore a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency in RCW 34.05.328 (5)(a)(i).

October 22, 2014
Lynn M. Briscoe
Assistant Director

AMENDATORY SECTION (Amending WSR 07-10-087, filed 5/1/07, effective 6/1/07)

WAC 16-70-005 Definitions. For the purpose of this chapter:

"Animal" means any animal species except fish and insects including all those so classified as wild, captive wild, exotic wild, alternative livestock, semidomesticated, domestic or farm.

"OIE notifiable disease list" means the diseases listed by the OIE in the *Terrestrial Animal Health Code* (((~~15th Edition, 2006~~)) 22nd Edition, 2013). The OIE notifiable disease list may be found on the internet at: ((~~http://www.oie.int/eng/maladies/en_classification.htm~~)) http://www.oie.int/en/international-standard-setting/terrestrial-code/. The list may also be found in the Washington state department of agriculture's *Animal Health Handbook for Veterinarians*.

"OIE" means Office International des Epizooties. The OIE is the World Organization of Animal Health.

"Reportable disease list" means the list of diseases that include the OIE notifiable disease list and other diseases listed in this chapter.

"Veterinary laboratory" means a place equipped for performing diagnostic or investigative procedures on submitted specimens from animals and fish by personnel whose primary duties are to conduct such procedures.

AMENDATORY SECTION (Amending WSR 07-10-087, filed 5/1/07, effective 6/1/07)

WAC 16-70-010 Requirements for reporting diseases that are on the OIE notifiable disease list. (1) Any veterinary laboratory or person licensed to practice veterinary medicine in the state of Washington shall immediately report to the office of the state veterinarian the existence or suspected existence among any animals within the state of any reportable or notifiable diseases as published by the OIE (effective ((~~January 23, 2006~~)) May 2013) or in this chapter.

(2) Case definitions shall conform to OIE standards under the *Terrestrial Animal Health Code* (((~~15th Edition, 2006~~)) 22nd Edition, 2013) and the *OIE Manual of Diagnostic Tests and Vaccines for Terrestrial Animals*, ((~~5th~~)) 6th Edition, ((~~2004~~)) (2008), with updates published online at: ((~~http://www.oie.int/eng/publicat/en_standards.htm~~)) http://www.oie.int/manual-of-diagnostic-tests-and-vaccines-for-terrestrial-animals/.

(a) A case means an individual animal affected by one of the diseases listed on the OIE notifiable disease list or a disease listed in this chapter.

(b) The criterion by which "affected" is defined for each disease (for example: Clinical signs, serological evidence, etc.) is found in the *Terrestrial Animal Health Code* and *Manual of Diagnostic Tests and Vaccines for Terrestrial Animals*.

(c) The OIE *Terrestrial Animal Health Code* can be found on the internet ((~~under OIE-Health Standards at: http://www.oie.int/eng/normes/en_mcode.htm~~)) http://www.oie.int/en/international-standard-setting/terrestrial-code/access-online/. The *Terrestrial Animal Health Code* is available in web format; a hard copy version may be ordered from OIE.

AMENDATORY SECTION (Amending WSR 10-13-055, filed 6/10/10, effective 7/11/10)

WAC 16-70-020 Other diseases reportable to WSDA. (1) In addition to the diseases published on the OIE notifiable disease list, the state veterinarian may request reports on other diseases of concern from a statistical or survey standpoint associated with overall disease control measures.

(2) Any veterinarian or veterinary laboratory must report to the office of the state veterinarian any of the diseases listed in subsection (5) of this section. Reports may be faxed to 360-902-2087 or sent to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577

(3) In addition to reporting requirements listed in the chart below, laboratories must send to the office of the state veterinarian reports of cultures of isolates from *Mycobacterium tuberculosis, Cryptococcus* excluding confirmed *Cryptococcus neoformans*, and Vancomycin resistant *Staphylococcus aureus* immediately after they are identified or the next business day.

(4) Veterinary laboratory directors must submit positive specimens of the diseases listed in subsection (3) of this section and any requested information to the state public health laboratories at:

Washington State Public Health Laboratories
Washington State Department of Health
1610 N.E. 150th Street
Seattle, Washington 98155

(5) The tables below describe the time frames associated with reportable diseases.

EMERGENCY CONDITIONS or DISEASE **Report to state veterinarian immediately upon suspicion**
MULTIPLE SPECIES
• Anthrax (*Bacillus anthracis*)
• Crimean Congo hemorrhagic fever
• Foot-and-mouth disease
• Heartwater (*Cowdria ruminantium*)
• Japanese encephalitis
• Livestock exposed to toxic substances which may threaten public health
• Malignant catarrhal fever (all forms)
• *Mycobacterium tuberculosis*
• Rabies in any species (excluding bats)
• Rift Valley fever
• Rinderpest (cattle plague)
• Screwworm myiasis (*Cochliomyia hominivorax* or *Chrysomya bezziana*)
• Surra (*Trypanosoma evansi*)
• Theileriosis (Corridor disease, East Coast fever)
• Unexplained increase in dead or diseased animals
• Vancomycin resistant (*Staphylococcus aureus*)
• Vesicular stomatitis

EMERGENCY CONDITIONS or DISEASE
Report to state veterinarian immediately upon suspicion

BOVINE

- African trypanosomiasis (Tsetse fly diseases)
- Bovine babesiosis (piroplasmosis)
- Bovine spongiform encephalopathy (mad cow)
- Contagious bovine pleuropneumonia (*Mycoplasma mycoides mycoides*)
- Lumpy skin disease

CAPRINE/OVINE

- Contagious agalactia (*Mycoplasma agalactia*)
- Contagious caprine pleuropneumonia (*Mycoplasma capricolum capripneumoniae*)
- Nairobi sheep disease
- ((~~Peste des petits ruminants (goat plague)~~)) Goat plague (*Peste des petits ruminants*)
- *Salmonella abortus ovis*
- Sheep and goat pox

PORCINE

- African swine fever
- Classical swine fever (hog cholera)
- Nipah virus
- Swine vesicular disease
- Vesicular exanthema of swine

POULTRY

- Exotic Newcastle disease (Viscerotropic velogenic Newcastle disease)
- High pathogenic avian influenza and low pathogenic avian influenza
- Turkey rhinotracheitis

EQUINE

- African horse sickness
- Dourine (*Trypanosoma equiperdum*)
- Equine piroplasmosis (*Theileria equi* and *Babesia caballi*)
- Glanders (Farcy) (*Pseudomonas mallei*)
- Hendra virus (Equine morbillivirus)
- Venezuelan equine encephalomyelitis

OTHER SPECIES

- Viral hemorrhagic disease of rabbits (calicivirus)

CONDITIONS OF REGULATORY IMPORTANCE
Report to state veterinarian within twenty-four hours of suspicion or confirmation

MULTIPLE SPECIES

- Bluetongue

CONDITIONS OF REGULATORY IMPORTANCE
Report to state veterinarian within twenty-four hours of suspicion or confirmation

- Brucellosis
  - Bovine (*Brucella abortus*)
  - Canine (*Brucella canis*)
  - Caprine (*Brucella abortus and B. melitensis*)
  - Cervids (*Brucella abortus*)
  - Ovine (*Brucella ovis*)
  - Porcine (*Brucella suis*)
- *Cryptococcus* not confirmed to be *Cryptococcus neoformans*
- Plague (*Yersinia pestis*)
- Pseudorabies (Aujeszky's disease)
- Tularemia
- West Nile virus

BOVINE

- Bovine tuberculosis (*Mycobacterium bovis*)
- Trichomoniasis (*Trichomonas fetus*)

CAPRINE/OVINE

- Contagious ecthyma (Orf)
- Scrapie

POULTRY

- Avian infectious laryngotracheitis
- Ornithosis (psittacosis or avian chlamydiosis) (*Chlamydia psittaci*)
- Pullorum disease (fowl typhoid) (*Salmonella gallinarum* and *S. pullorum*)

EQUINE

- Contagious equine metritis (*Taylorella equigenitalis*)
- Ehrlichiosis (Potomac horse fever)
- Equine encephalomyelitis (Eastern and Western equine encephalitis)
- Equine infectious anemia (swamp fever)
- Equine rhinopneumonitis (Equine herpesvirus-1 neurologic form)

SWINE

- Porcine epidemic diarrhea virus (PEDv)

OTHER SPECIES

- Chronic wasting disease in cervids
- Tuberculosis in cervids

MONITORED CONDITIONS
Report by monthly summaries

MULTIPLE SPECIES

- Avian tuberculosis (*Mycobacterium avium*)

MONITORED CONDITIONS Report by monthly summaries
• Coccidioidomycosis (*Coddidioides immitis*) (valley fever)
• Echinococcosis/Hydatidosis (*Echinococcus* ((~~species~~)) sp.)
• Johne's disease (*Mycobacterium avium* subspecies *paratuberculosis*)
• Leishmaniasis
• Leptospirosis
• Listeriosis
• Lyme Disease
• Q Fever (*Coxiella burnetii*)
• Salmonella
• Scabies
BOVINE
• Anaplasmosis *(Anaplasma marginale* or *A. centrale*)
• Beef measles (((~~Teania~~)) *Taenia saginata*)
• Bovine genital campylobacteriosis (*Campylobacter fetus venerealis*)
• Bovine viral diarrhea
• Enzootic bovine leukosis (Bovine leukemia virus)
((• ~~Infectious bovine rhinotracheitis (Bovine herpesvirus-1)~~)))
CAPRINE/OVINE
• Caprine (contagious) arthritis/encephalitis)
• Caseous lymphadenitis
• Enzootic abortion of ewes (((~~Chlamydia psittaci~~))) (*Chlamydophila abortus*)
• Maedi-Visna (Ovine progressive pneumonia)
PORCINE
• Porcine circovirus (post-weaning multisystemic wasting syndrome)
• Porcine cysticercosis (*Taenia solium* in humans)
• Porcine reproductive and respiratory syndrome
• Transmissible gastroenteritis (coronavirus)
• Trichinellosis (*Trichinella spiralis*)
POULTRY
• Avian infectious bronchitis
• Avian mycoplasmosis (*Mycoplasma synoviae*)
• Duck viral hepatitis
• Fowl cholera (*Pasteurella multocida*)
• Infectious bursal disease (Gumboro disease)
• Infectious coryza (*Avibacterium paragallinarum*)
• Marek's disease
• Mycoplasmosis (*Mycoplasma gallisepticum*)

MONITORED CONDITIONS Report by monthly summaries
EQUINE
• Equine influenza
• Equine rhinopneumonitis (Equine herpesvirus-1 nonneurologic form)
• Equine viral arteritis
• Strangles (*Streptococcus equi* subsp. *equi*)
• Pigeon Fever (*Corynebacterium pseudotuberculosis*)
OTHER SPECIES
• Fish diseases on the OIE notifiable disease list
• Heartworm
• Hemorrhagic diseases of deer (bluetongue, adenovirus, and epizootic hemorrhagic disease)
• Myxomatosis in commercial rabbits

WSR 14-21-165
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed October 22, 2014, 8:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-030.

Title of Rule and Other Identifying Information: Chapter 16-29 WAC, Animal disease traceability.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., First Floor, Conference Room 175, Olympia, WA 98504, on December 8, 2014, at 12:30 p.m.; and at Central Washington University, 400 East University Way, Sue Lombard Hall, Ellensburg, WA 98926, on December 9, 2014, at 11:00 a.m.

Date of Intended Adoption: December 30, 2014.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules Comments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., December 9, 2014.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist by December 1, 2014, TTY (800) 833-6388, or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to add new chapter 16-29 WAC, Animal disease traceability. The 2011 legislative session passed SHB 1538 which directed the department to adopt by rule a fee per head on cattle sold or slaughtered in the state or transported out of the state to administer animal disease traceability activities for cattle. The proposed new WAC will establish per head fees on cattle sold or slaughtered in the state or transported out of state, establish a process to assess and collect the fees, and establish a penalty matrix for failing to pay the fees.

Reasons Supporting Proposal: If Washington state is unable to trace cattle, the United States Department of Agriculture has the authority to put movement restrictions on the

entire state. This new WAC is necessary for the department to trace cattle that may be infected or have been exposed to infectious and communicable diseases. In order for the department to trace cattle, the department must obtain health and movement information to determine where cattle originated from, where the cattle moved to, and what cattle were exposed.

Statutory Authority for Adoption: RCW 16.36.150 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: David Hecimovich, Olympia, (360) 725-5493; and Enforcement: David Bangart, Olympia, (360) 902-1946.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: During the 2011 legislative session, the cattle industry approached the legislature for WSDA to adopt rules that will prevent the introduction or spreading of infectious livestock diseases into the state. One component of this request is the ability to carry out animal disease traceability activities for cattle funded through fees. The legislation was passed (SHB 1538) and a new section was added to chapter 16.36 RCW allowing the director to administer animal disease traceability activities for cattle by adopting by rule a fee per head on cattle sold or slaughtered in the state, or transported out of the state. The fee would not exceed forty cents per head of cattle.

WSDA is proposing to establish chapter 16-29 WAC, Animal disease traceability within Title 16 WAC, Department of agriculture. The purpose of this chapter is to establish animal disease traceability activities for cattle.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS): Chapter 19.85 RCW, the Regulatory Fairness Act, requires an analysis of the economic impact proposed rules will have on regulated small businesses. Preparation of an SBEIS is required when proposed rules will impose more than minor costs for compliance or have the potential of placing an economic impact on small businesses that is disproportionate to the impact on large businesses. "Minor cost" means a cost 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. "Small business" means any business entity that is owned and operated independently from all other businesses and has fifty or fewer employees.

INDUSTRY ANALYSIS: The animal disease traceability program will be responsible for administering animal disease tracebacks for livestock within the state of Washington. The program has determined it regulates six thousand four hundred twenty existing businesses that fall under the North American Industry Classification System codes corresponding to the regulated industry: 31161, Animal Slaughtering (except poultry); 112120, Dairy Cattle and Milk Production; 112111, Beef Cattle Ranching & Farming; and 112112, Cattle Feedlots.

INVOLVEMENT OF SMALL BUSINESSES: A small business economic impact assessment survey was mailed to six thousand four hundred twenty producers and businesses (six thousand sixty-three registered brand holders and three hundred fifty-seven businesses associated with cattle who were not registered brand holders) to analyze the economic impact of proposed rules on small businesses.

WSDA analyzed how the fee per head to administer animal disease traceability activities for cattle would be collected on cattle at change of ownership, transported out of the state, or slaughtered in the state.

COST OF COMPLIANCE: RCW 19.85.040 directs agencies to analyze the costs of compliance for businesses required to comply with the proposed rule, including costs of equipment, supplies, labor, professional services, and increased administrative costs. Agencies must also consider whether compliance with the rule will result in loss of sales or revenue. RCW 19.85.040 directs agencies to determine whether the proposed rule will have a disproportionate cost impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the ten percent of the largest businesses required to comply with the proposed rules. Agencies are to use one or more of the following as a basis for comparing costs:

- Cost per employee;
- Cost per hour of labor; or
- Cost per one hundred dollars of sales.

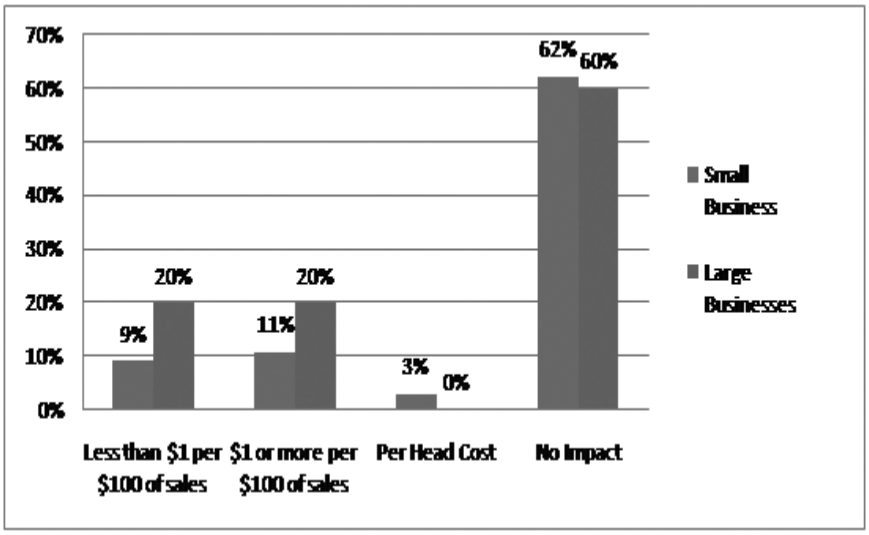
The program has opted to look at cost per one hundred dollars of sales as a basis for comparing costs.

Analysis of Cost of Compliance: The program has analyzed the cost of compliance anticipated by regulated small businesses. Four hundred and eight small businesses and five large businesses returned the small business economic impact survey. Thirty-seven percent of small businesses and sixty percent of the large businesses surveyed indicated fees would have an impact.

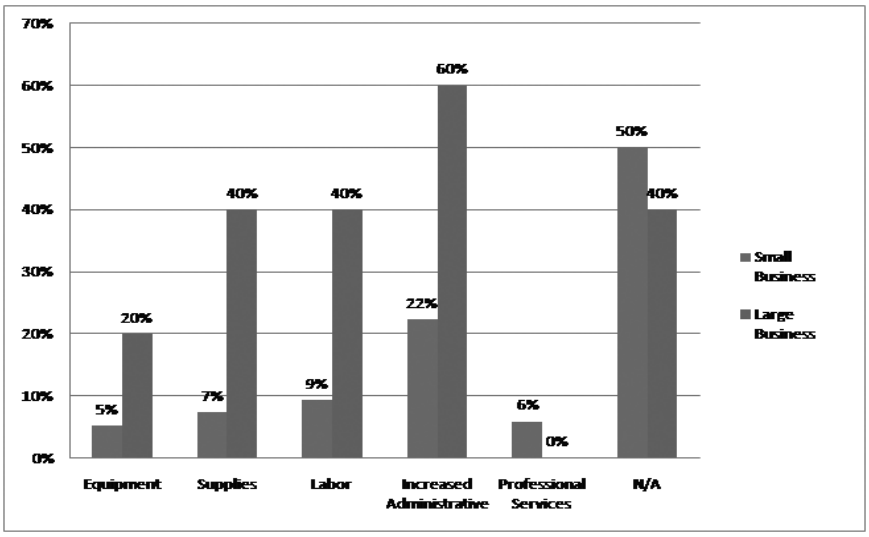
The following questions were asked and then charted to business that may have an impact from SHB 1538:

- Will the business incur costs to comply? If yes, cost per $100 of sales?
- What kinds of resources will the business likely need i.e., equipment, supplies, labor, increased administrative costs or professional services?
- Will the business lose sales or revenue? If yes, how much revenue will be lost?
- Will jobs be created or eliminated? If yes, how many jobs?

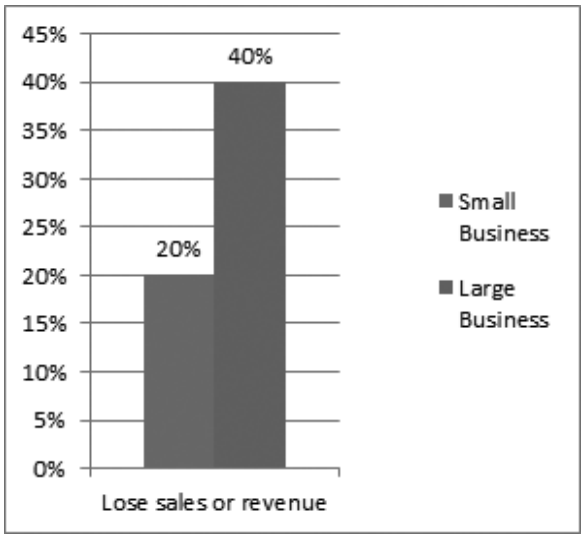
Question: Will the business incur costs to comply? If yes, cost per $100 of sales?

Costs listed as less than $1 per $100 of sales, $1 or more per $100 of sales, per head cost and no impact.	

Question: What kinds of resources will the business likely need i.e., equipment, supplies, labor, increased administrative costs or professional services?

50% of small business and 60% of the large business would require resources.	

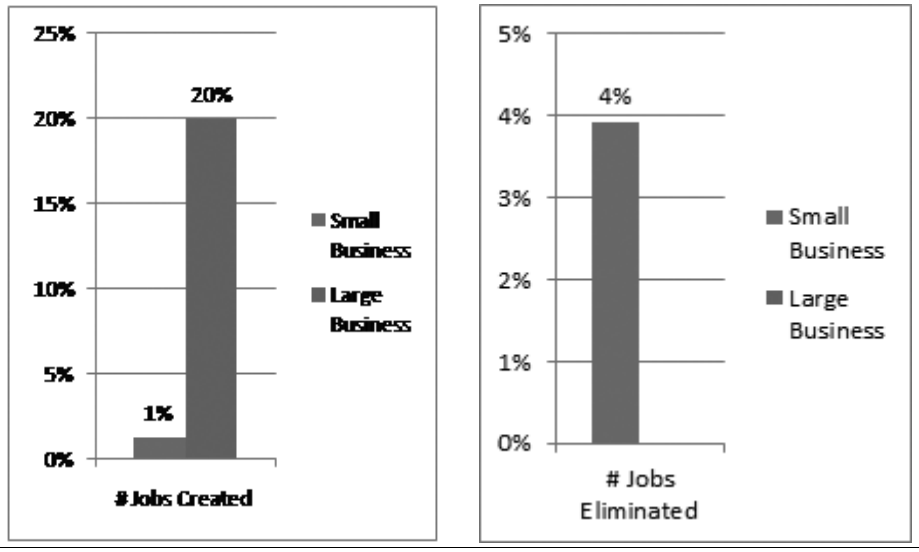
Question: Will the business lose sales or revenue? If yes, how much revenue will be lost?

20% of small business and 40% of large business would lose sales or revenue Note: The 20% total of small business was from the sum of 13% of small business would lose sales or revenue plus 8% of small business reporting sales or revenue lost on a per head basis. Large business only reported loss of sale or revenue.	

Analysis of Disproportionate Economic Impact: When costs associated with proposed rules are more than minor, the Regulatory Fairness Act requires a comparison of the costs to small businesses with those of ten percent of the largest businesses in the regulated industry. An analysis has shown that the costs small businesses will incur to comply with the proposed rules are not more than minor and are not disproportionate to costs incurred by large business entities.

JOBS CREATED OR LOST: Under RCW 19.85.040, agencies must provide an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rules.

Question: Will jobs be created or eliminated? If yes, how many jobs?

1% of small business and 20% of large business responded 1 or 2 jobs would be created. 4% of small business responded 1 or 2 jobs would be eliminated. No large business reported an impact.	

CONCLUSION: To comply with chapter 19.85 RCW, the Regulatory Fairness Act, WSDA has analyzed the economic impact of the proposed rules on small businesses and has concluded that the costs are not more than minor and there is no disproportionate impact between small and large businesses.

Please contact David Hecimovich if you have any questions at (360) 725-5493, or by e-mail dhecimovich@agr.wa.gov.

A copy of the statement may be obtained by contacting David Hecimovich, WSDA, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 725-5493, fax (360) 902-2087, e-mail dhecimovich@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency in RCW 34.05.328 (5)(a)(i).

October 22, 2014
Lynn M. Briscoe
Assistant Director

Chapter 16-29 WAC

ANIMAL DISEASE TRACEABILITY

NEW SECTION

WAC 16-29-005 Purpose. The purpose of this chapter is to administer animal disease traceability activities by assessing a per head fee on cattle sold or slaughtered in the state or transported out of the state.

NEW SECTION

WAC 16-29-010 Definitions. In addition to the definitions found in RCW 16.36.005, 16.57.010, 16.58.020 and chapter 16-610 WAC the following definitions apply to this chapter:

"Custom slaughtering" means slaughtering performed by a person licensed under chapter 16.49 RCW to slaughter meat food animals for the owner of the animal.

"Entry permit" means prior written permission issued by the director to admit or import animals or animal reproductive products into Washington state.

"Immediate slaughter cattle" means out-of-state cattle processed within twenty-four hours of entry to a federally inspected slaughter facility.

"Slaughter facility" means an establishment operated for the purpose of slaughtering meat food animals for sale or use as human food in compliance with the federal Meat Inspection Act.

NEW SECTION

WAC 16-29-015 Levy and collection of assessment. (1) An assessment of $0.23 per head is levied on all cattle sold or slaughtered in the state or transported out of the state except for:

(a) An assessment of $0.05 per head is levied on all immediate slaughter cattle.

(b) No assessment is paid on cattle slaughtered and retained by the owner for personal consumption.

(2) Collection of assessments will be collected in the same manner as the livestock inspection fees under RCW 16.57.223 and 16.65.090 except for subsection (1)(a) of this section. For immediate slaughter cattle or cattle originating from a certified feedlot, the assessments will be collected by the slaughter facility and remitted to the department by the fifteenth day of the month following the month the transaction occurred.

In addition to the assessment collected by the slaughter facility, the slaughter facility shall furnish the department a list of all cattle slaughtered during any given month.

(3) Assessments owed from private individual sales, trades, gifting, barter, or any other action that constitutes a change of ownership of livestock per WAC 16-610-020(3), not occurring at a public livestock market or special sale licensed under chapters 16.65 RCW and 16-610 WAC or a slaughter facility, will be collected:

(a) When a change of ownership livestock inspection is conducted or when the transaction is reported through an electronic livestock movement reporting system per chapter 16-610 WAC.

(b) When utilizing the "green tag" as provided in RCW 16.57.160(3). The assessment will be added to the purchase price of each tag.

(4) Assessments are collected at a federally inspected slaughter facility when:

(a) Cattle are sold and slaughtered concurrently. This is considered a one assessment event and one fee shall be collected per head from the seller.

(b) Cattle originate from a certified feedlot licensed under chapter 16.58 RCW. The assessments will be collected by the slaughter facility and remitted to the department by the fifteenth day of the month following the month the transaction occurred.

(c) Cattle are slaughtered and no change of ownership has occurred, the per head fee shall be collected from the owner of the animal.

(5) Collection of assessments for custom slaughtering occurs when utilizing custom slaughter beef tags per WAC 16-610-100. The assessment will be added to the purchase price of each tag.

(6) Collection of assessments at public livestock markets and special sales licensed under chapter 16.65 RCW will be considered one assessment event, charged to the seller, when:

(a) Cattle are purchased and destined to an out-of-state location by the buyer.

(b) Cattle are purchased and destined for slaughter to an in-state federally inspected slaughter facility.

(7) When Washington origin cattle are transported for sale to an out-of-state market where the director conducts inspections of Washington origin cattle by agreement with the host state, it shall be considered one assessment event and one fee shall be collected per head from the Washington seller.

(8) Collection of assessments for out-of-state movement occurs when:

(a) Cattle are purchased and destined to an out-of-state location by the buyer. This is considered a one assessment event and one fee shall be collected per head from the seller.

(b) Cattle are moving out-of-state with no change of ownership.

NEW SECTION

WAC 16-29-020 Inspection of records. The slaughter facility must keep accurate records for six years for all cattle entering a federally inspected slaughter facility. Records must be open for review by authorized department of agriculture personnel during normal business hours, and must be provided to the department upon the director's request.

NEW SECTION

WAC 16-29-025 Penalty outline and schedule. (1) If any person fails to comply with the requirements of RCW 16.36.150 and this chapter, the director may issue that person a notice of infraction and may assess a penalty.

(2) Each violation is a separate and distinct offense. Penalties may be assessed per violation or per head.

(3) The following is the base penalty, not including statutory assessments.

Violation	Base Penalty
RCW 16.36.150	Failing to pay the traceability fee
First offense	$50.00
Second offense within three years	$125.00
Third and subsequent offenses within three years	$250.00

WSR 14-21-166
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed October 22, 2014, 8:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-22-081.

Title of Rule and Other Identifying Information: Chapter 16-610 WAC, Livestock brand inspection.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., First Floor, Conference Room 175, Olympia, WA 98504, on December 8, 2014, at 12:30 p.m.; and at Central Washington University, 400 East University Way, Sue Lombard Hall, Ellensburg, WA 98926, on December 9, 2014, at 11:00 a.m.

Date of Intended Adoption: December 30, 2014.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules Comments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., December 9, 2014.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist by December 1, 2014, TTY (800) 833-6388, or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-610 WAC to:

- Eliminate the livestock inspection exemption for private sales of unbranded, female, dairy breed cattle involving fifteen head or less;
- Clarify the need for a certificate of permit to accompany transactions involving cattle not being moved out-of-state when presented for an inspection by the buyer; and
- Add the reference for the animal disease traceability (ADT) fee to the cost of custom slaughter beef tags.

Reasons Supporting Proposal: ADT in Washington relies on data collected mainly from two existing WSDA programs - our livestock inspection and animal health programs. While the livestock inspection program was historically created to verify ownership and protect assets, the information gathered by the program has become crucial for tracking in-state animal movement, something that is key for traceability. Any exemption undermines the integrity of ADT and the fifteen head exemption knowingly leaves a big gap in traceability efforts, creating an unnecessary risk to our livestock industries.

Statutory Authority for Adoption: Chapters 16.57 and 34.05 RCW.

Statute Being Implemented: Chapter 16.57 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lynn Briscoe, Olympia, (360) 902-1804; and Enforcement: David Bangart, Olympia, (360) 902-1946.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: WSDA livestock inspection program is proposing to amend chapter 16-610 WAC.

The livestock inspection program is dedicated to providing asset protection for the livestock industry by recording brands, licensing feedlots and public livestock markets, and by conducting surveillance and inspection of livestock at time of sale and upon out-of-state movement. The purpose of this chapter is to regulate and govern the livestock inspection program and livestock industry.

The proposed amendments to this chapter include:

- Eliminate the livestock inspection exemption for private sales of unbranded, female, dairy breed cattle involving fifteen head or less;
- Clarify the need for a certificate of permit to accompany transactions involving cattle not being moved out-of-state when presented for an inspection by the buyer;
- Add the reference for the ADT fee to the cost of custom slaughter beef tags.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS): Chapter 19.85 RCW, the Regulatory Fairness Act, requires an analysis of the economic impact proposed rules will have on regulated businesses. Preparation of an SBEIS is required when proposed rules have the potential to impose more than minor costs on businesses.

"Minor cost" means a cost that is less than one percent of annual payroll or the greater of either .3 percent of annual revenue or $100.

"Small business" means any business entity that is owned and operated independently from all other businesses and has fifty or fewer employees.

INDUSTRY ANALYSIS: The proposed rule impacts businesses that fall under the North American Industry Classification System codes corresponding to the regulated industry: 112111, Cattle farming or ranching; 112120, Dairy cattle and milk production; 424520, Cattle merchant wholesalers.

INVOLVEMENT OF SMALL BUSINESSES: Small businesses have been involved in writing the proposed rules and in providing the department with the expected costs associated with the changes. The department has been working with industry members, discussing ADT and the removal of the

fifteen head exemption since 2007. There have been a number of work sessions with industry members and presentations at industry meetings. Along with existing efforts, a small business economic impact assessment survey was mailed to five hundred two dairy producers and cattle dealers to analyze the economic impact of proposed rules on small businesses. WSDA analyzed how the removal of the fifteen head exemption would impact the dairy industry in the state.

COST OF COMPLIANCE: RCW 19.85.040 directs agencies to analyze the costs of compliance for businesses required to comply with the proposed rule.

The program has analyzed the cost of compliance anticipated by regulated small businesses. Forty small businesses, three large businesses, and one unknown size business returned the small business economic impact survey. Seventy-eight percent of small businesses and thirty-three percent of the large businesses surveyed indicated that removing the fifteen head exemption would have an impact. Seventy-three percent of small businesses and thirty-three percent of large businesses indicated that they would need additional resources; eight percent of small businesses and zero percent of large businesses indicated that they would need to increase staff; and thirty percent of small businesses and zero percent of large businesses thought they may lose sales or revenue to comply with the laws.

The cost of a brand inspection on the class of cattle covered under the current fifteen head exemption is $1.60 per head ($24.00 for fifteen head).

JOBS CREATED OR LOST: Under RCW 19.85.040, agencies must provide an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rules.

In collecting information from representative small businesses through the survey the program estimates that eight percent of small businesses will need to increase their current staff by one or two employees to comply with the proposed changes.

DISPROPORTIONATE IMPACT TO SMALL BUSINESSES: RCW 19.85.040 directs agencies to determine whether the proposed rule will have a disproportionate cost impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the ten percent of the largest businesses required to comply with the proposed rules. Use one or more of the following as a basis for comparing costs:

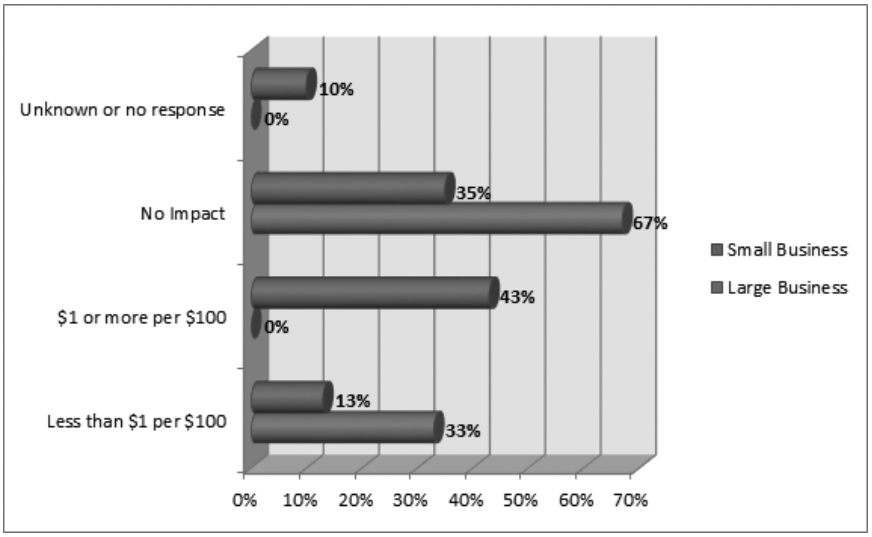
- Cost per employee;
- Cost per hour of labor; or
- Cost per one hundred dollars of sales.

The program has opted to look at cost per one hundred dollars of sales as a basis for comparing costs. The program has analyzed the cost of compliance anticipated by regulated small businesses.

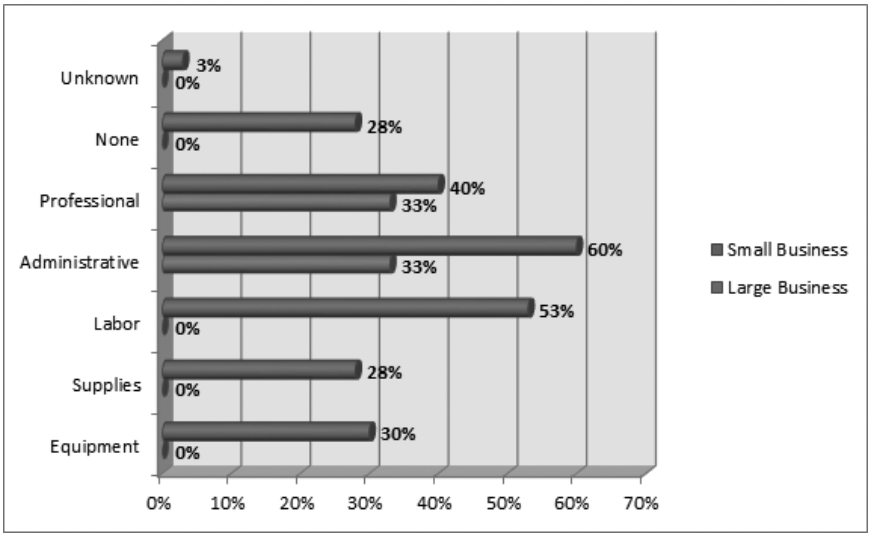
The following questions were asked and then charted for business that may experience impact from removing the fifteen head exemption language from chapter 16-610 WAC:

- How much does your business expect to pay to comply with the rule?
- What kinds of resources will the business likely need i.e., equipment, supplies, labor, increased administrative costs or professional services?
- Will the business lose sales or revenue? If yes, how much revenue will be lost?
- Will the estimated cost of compliance be more than "minor" (defined as more than 3/10 of one percent of annual revenue; or more than $100; or more than one percent of annual payroll)?

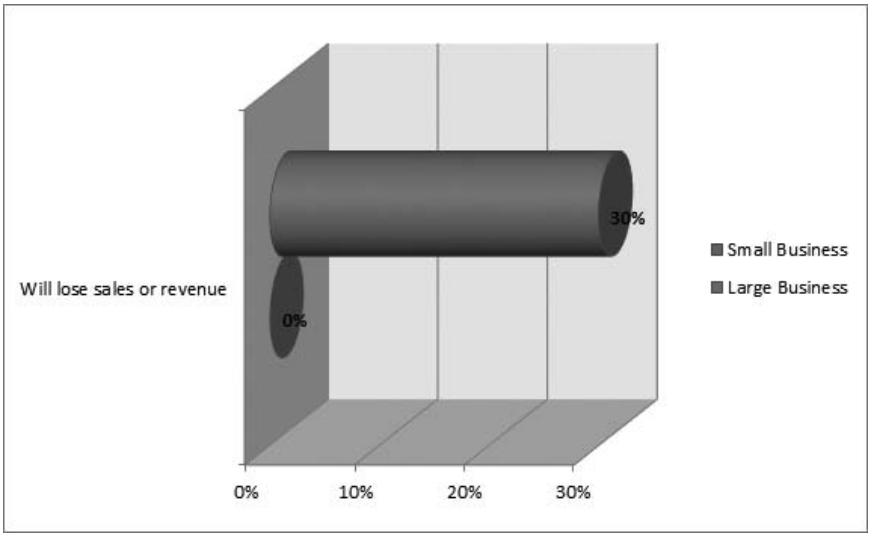
Question: How much does your business expect to pay to comply with the rule?



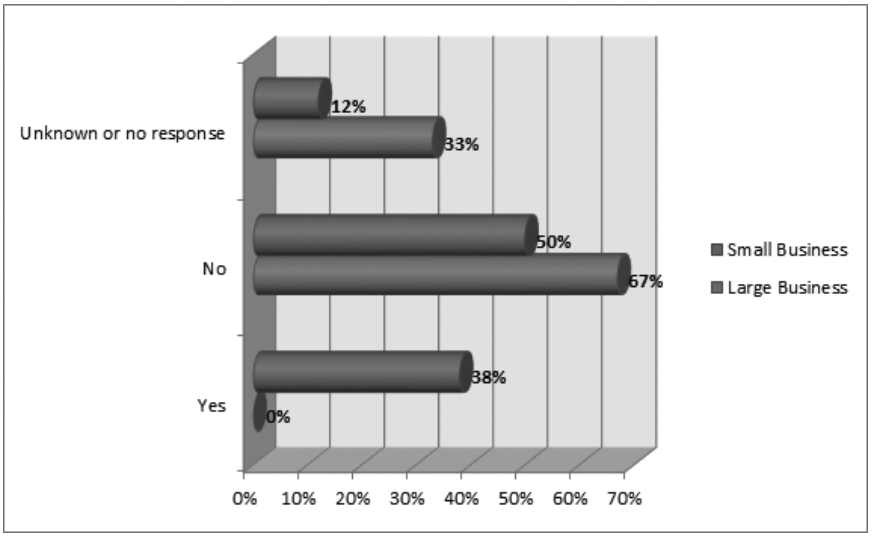
Question: What kinds of resources will the business likely need i.e., equipment, supplies, labor, increased administrative costs or professional services?



Question: Will the business lose sales or revenue?



Question: Will the estimated cost of compliance be more than "minor" (defined as more than 3/10 of one percent of annual revenue; or more than $100; or more than one percent of annual payroll)?



CONCLUSION: To comply with chapter 19.85 RCW, the Regulatory Fairness Act, the livestock inspection program has analyzed the economic impact of the proposed rules on small businesses and has concluded that, depending upon the number of cattle sold per year, the costs may be more than minor (greater than $100.00), but there is no disproportionate impact between small and large businesses. The department will work with affected businesses for potential ways to mitigate costs for small businesses.

Please contact Dawn Grummer if you have any questions, (360) 902-1987, or by e-mail dgast@agr.wa.gov.

A copy of the statement may be obtained by contacting Dawn Grummer, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1987, fax (360) 902-2087, e-mail dgast@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency in RCW 34.05.328 (5)(a)(i).

October 22, 2014
Lynn M. Briscoe
Assistant Director

AMENDATORY SECTION (Amending WSR 10-21-016, filed 10/7/10, effective 11/7/10)

WAC 16-610-020 Cattle inspections for brands or other proof of ownership. (1) All cattle must be inspected for brands or other proof of ownership:

(a) Before being moved out of Washington state, unless the provisions of WAC 16-610-035(2) apply.

(b) When offered for sale at any public livestock market or special sale approved by the director.

(c) Upon delivery to any cattle processing plant where the United States Department of Agriculture maintains a meat inspection program, unless the cattle:

(i) Originate from a certified feedlot; or

(ii) Are accompanied by an inspection certificate issued by the director, or a veterinarian certified by the director, or an agency in another state or Canadian province authorized by law to issue such a certificate.

(2) All cattle entering or reentering any certified feedlot licensed under chapter 16.58 RCW must be inspected for brands or other proof of ownership before commingling with other cattle unless the cattle are accompanied by an inspection certificate issued by the director, or a veterinarian certified by the director, or an agency in another state or Canadian province authorized by law to issue such a certificate.

(3) All cattle must be inspected for brands or other proof of ownership at any point of private sale, trade, gifting, barter, or any other action that constitutes a change of ownership((~~, except for individual private sales of unbranded female dairy breed cattle involving fifteen head or less~~)). For transactions involving cattle not being moved or transported out of Washington state:

(a) Cattle must be presented for an inspection within fifteen days from the date of the initial transaction and accompanied by a certificate of permit. It shall be the responsibility of the seller to notify the department immediately that a sale has occurred. It shall be the responsibility of the buyer to present the animals for inspection.

(b) Cattle sold for 4-H and FFA youth projects are exempt from the fifteen day inspection requirement and can be inspected, if not prior, when consigned to a terminal show.

(c) Until the earlier of January 1, 2016, or the date of notice that an electronic livestock movement reporting system is available for use, individual private sales of unbranded female dairy breed cattle involving fifteen head or less are exempt from the inspection requirement.

(4) Exemptions from mandatory inspections do not exempt cattle owners or sellers from paying beef promotion fees owed to the Washington state beef commission under chapter 16.67 RCW or the animal disease traceability fee owed to the department under chapter 16.36 RCW.

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-100 Identification of custom slaughtered animals. (1) Any person presenting cattle for slaughter to a licensed custom slaughterer must give the custom slaughterer a completed certificate of permit. The certificate of permit documents the ownership of the animal at the time of slaughter.

(2) Any person licensed as a custom slaughterer must complete and attach a custom slaughter beef tag to each of the four quarters of all slaughtered cattle that are handled. In order to identify the owner of the carcass, these tags must remain attached to the quarters until the carcass is processed and the quarters are cut and wrapped.

(3) Only the department may provide custom slaughter beef tags to custom slaughterers. The fee for each set of four custom slaughter beef tags is one dollar and fifty cents plus the animal disease traceability fee owed to the department under chapter 16.36 RCW.

(4)(a) Custom meat facilities may accept carcasses of cattle slaughtered by the cattle owner only if a certificate of permit, signed by the owner, accompanies the carcass.

(b) Without a certificate of permit signed by the owner, custom meat facilities can only accept carcasses from mobile or fixed location custom farm slaughterers or officially inspected slaughter plants.

WSR 14-21-167
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed October 22, 2014, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-121 on August 6, 2014.

Title of Rule and Other Identifying Information: Amending coastal commercial Dungeness crab rules, WAC 220-52-041 Coastal Dungeness crab logbook requirements, 220-52-042 Commercial crab fishery—Buoy tag, pot tag, and buoy requirements, 220-52-045 Commercial crab fishery—Seasons and areas—Coastal, and 220-52-049, Commercial crab fishery—Gear limits—Coastal.

Hearing Location(s): Washington State Department of Fish and Wildlife (WDFW) Region 6 Headquarters, 48 Devonshire Road, Montesano, WA 98563, on November 25, 2014, at 9:00 a.m.

Date of Intended Adoption: On or after December 12, 2014.

Submit Written Comments to: Heather Reed, Coastal Marine Resources Policy Coordinator, 48 Devonshire Road, Montesano, WA 98563, e-mail Heather.Reed@dfw.wa.gov, fax (360) 249-1229, by November 25, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by November 18, 2014, TTY (800) 833-6388, or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to existing coastal commercial Dungeness crab rules to clarify the intent and improve enforceability of rules that describe the process and requirements for issuing replacement buoy tags and submitting coastal Dungeness crab logbooks.

Reasons Supporting Proposal: Changes to rules are needed to implement gear retrieval requirements for coastal Dungeness crab fishers to improve enforceability and minimize derelict crab gear. Based on recommendations from the Tri-State Dungeness Crab Committee, changes to the season opening are needed to improve safety, enhance enforceability and provide for a coordinated season opening for the Washington and Oregon commercial Dungeness crab fishery.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Heather Reed, Region 6 Headquarters, Montesano, Washington, (360) 249-1202; and Enforcement: Chief Steve Crown, 1111 Washington Street S.E., Olympia, WA, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: This proposed rule change involves proposed modification of regulations pertaining to the coastal commercial Dungeness crab fishery. Specifically, the proposal makes changes to logbook requirements, regulations for replacement buoy tags, the preseason gear set period, and establishes a new gear tending requirement.

The proposed change to the logbook requirement will require crab caught in Oregon and delivered into a Washington port be recorded in a logbook. This change brings Oregon-caught crab under the logbook reporting requirements already in place for all other crab delivered into a Washington port.

Changes to the replacement buoy tag program will change the dates when commercial fishermen are allowed to replace lost buoy tags allowing fishers to begin requesting replacement tags fifteen days after the start of the season. This change will also reduce the number of replacement buoy tags allowed for each license owner. The proposed rule will require the primary or alternate operator fishing the gear to sign an affidavit stating the number of tags lost, the location and date where the tags were last observed, and the presumed cause of the loss. The existing regulations require that the license owner sign an affidavit with similar reporting requirements.

Proposed changes to the preseason gear period will extend the amount of time that commercial fishermen have to set their pots prior to the opening of the season. This change does not have any reporting or recordkeeping requirements.

The part of the proposal establishing a new gear tending requirement makes it unlawful to leave Dungeness crab pots

deployed in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington for more than twenty-one consecutive days without making a Dungeness crab landing. This change will require fishers to remove gear when they are finished fishing, but does not impose any reporting or recordkeeping requirements.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply With Such Requirements: There are no professional service requirements for a small business to comply with the requirements.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The costs of compliance with the provisions within the proposal may be in employee/owner working time, but any costs will be negligible as the requirements for completing logbooks and obtaining replacement buoy tags are essentially the same as the requirements that have been in effect for some time.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No. Compliance with the changes to department requirements in this rule making will not cause businesses to lose sales or revenue because the changes do not involve any marked increase to preexisting requirements already imposed on affected businesses.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;

2. Cost per hour of labor; or

3. Cost per one hundred dollars of sales.

The costs of complying with the proposed changes to the rules in this project will be negligible as the changes do not involve any marked increase to preexisting requirements.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Costs are negligible; the requirements in the rules already apply to affected small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: WDFW has an active Dungeness crab advisory board appointed by the director. WDFW staff discussed these changes with the Dungeness crab advisory board. In addition, WDFW staff have met with a larger ad hoc group of industry representatives and discussed many of the issues surrounding these proposed changes. WDFW sends out a notice of proposed rule-making projects after the proposed rule changes are filed to all coastal Dungeness crab license owners. This notice directs those people to information on how they can participate in the rule-making process and comment on proposed changes.

8. A List of Industries That Will Be Required to Comply with the Rule: Coastal commercial Dungeness crab fishers and license owners.

A copy of the statement may be obtained by contacting Heather Reed, WDFW Region 6 Headquarters, 48 Devonshire Road, Montesano, WA 98563, phone (360) 249-1202, fax (360) 249-1299, e-mail Heather.Reed@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics rules.

October 22, 2014
Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-23-090, filed 11/20/07, effective 12/21/07)

WAC 220-52-041 Coastal Dungeness crab logbook requirements. (1) It is unlawful for any vessel operator engaged in fishing for Dungeness crab in the coastal commercial fishery to fail to have in possession, and complete a department-issued logbook for all fishing activity occurring in Grays Harbor, Willapa Bay, the Columbia River, or the Pacific Ocean waters ((~~adjacent to the state of~~)) for all crab deliveries to a Washington port. For the purposes of this section, "delivery" is defined as provided in RCW 77.65.210.

(2) It is unlawful for any vessel operator engaged in fishing to fail to comply with the following method and time frame related to harvest logbook submittal and record keeping:

(a) The department must receive a copy of the completed logbook sheets within ten days following any calendar month in which fishing occurred. Completed Dungeness crab harvest logs must be sent to the following address: Washington Department of Fish and Wildlife, Attention: Coastal Dungeness Crab Manager, 48 Devonshire Rd., Montesano, WA 98563.

(b) Vessel operators engaged in fishing for Dungeness crab in the coastal commercial fishery must complete a logbook entry for each day fished prior to offloading. Vessel operators responsible for submitting logs to the department must maintain a copy of all submitted logs for no less than three years after the fishing activity ended.

(c) Vessel operators can obtain logbooks by contacting the department's coastal Dungeness crab manager at 360-249-4628.

(3) A violation of this section is ((~~a misdemeanor~~)) an infraction, punishable under RCW ((~~77.15.280~~)) 77.15.160.

AMENDATORY SECTION (Amending WSR 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-52-042 Commercial crab fishery—Buoy tag, pot tag, and buoy requirements. (1) **Buoy tag and pot tag required.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of this section, except as provided by (b) of this subsection. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC 220-52-045 may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(2) **Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must

have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Commercial crab fishery buoy tag requirements.**

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) Replacement crab buoy tags.

(i) Puget Sound: The department only issues additional tags to replace lost tags to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration, under penalty of perjury, in the presence of an authorized department employee. The declaration must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery 15 days after the season is opened and after a signed affidavit is received by ((~~the~~)) an authorized department ((~~from the owner of a coastal commercial crab fishery license~~)) employee. The affidavit must be signed by the primary or alternate operator fishing the commercial crab gear and state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(A) Coastal crab license holders with a 300-pot limit may replace ((~~up to 15~~)) lost tags ((~~by January 15th, up to a total of 30 lost tags by February 15th, and up to a total of 45 lost tags after March 15th of each season~~)) according to the following schedule:

(I) Period 1, up to 15 tags.

(II) Period 2, 10 additional tags with no more than 25 tags total issued through the end of Period 2.

(III) Period 3, 5 additional tags with no more than 30 tags total issued through the end of the season.

(B) Coastal crab license holders with a 500-pot limit may replace ((~~up to 25~~)) lost tags ((~~by January 15th, up to a total of 50 lost tags by February 15th, and up to a total of 75 lost tags after March 15th of each season.~~

~~(C)~~)) according to the following schedule:

(I) Period 1, up to 25 tags.

(II) Period 2, 15 additional tags with no more than 40 tags total issued through the end of Period 2.

(III) Period 3, 10 additional tags with no more than 50 tags total issued through the end of the season.

(C) Replacement tag periods are defined as follows:

(I) Period 1: The first business day after 15 days following the season opening through the next 30 days.

(II) Period 2: The first business day after the end of Period 1 through the next 30 days.

(III) Period 3: The first business day after the end of Period 2 through the end of the season.

(D) In the case of extraordinary loss of crab pot gear, the department may issue replacement tags in excess of the amount listed in this subsection on a case-by-case basis.

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(5) **Commercial crab fishery buoy requirements.**

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when 5 pounds of weight is attached.

(b) No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-56-320.

(c) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder may register only one unique buoy brand and one buoy color scheme with the department per license. Persons holding more than one state license must register buoy color(s) for each license that are distinctly different. The buoy color(s) will be shown in a color photograph.

(i) All buoys fished under a single license must be marked in a uniform manner with one buoy brand number registered by the license holder with the department and be of identical color or color combinations.

(ii) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

(6) Violation of subsection (5) of this section is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending WSR 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-52-045 Commercial crab fishery—Seasons and areas—Coastal. The open times and areas for coastal commercial crab fishing are as follows:

(1) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are ((~~open~~)) closed to commercial crab fishing ((~~December 1 through September 15 except that it is permissible to set baited crab gear beginning at 8:00 a.m. November 28~~)) except as provided by emergency rule.

(2) The department may delay opening of the coastal crab fishery due to softshell crab conditions. If the department delays a season due to softshell crab conditions, the following provisions will apply:

(a) After consultation with the Oregon department of fish and wildlife and the California department of fish and wildlife, the director may establish a softshell crab demarcation line by emergency rule.

(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to softshell crab for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(c) It is unlawful for fishers to set crab gear in any area where the season opening is delayed, except that gear may be set as allowed by emergency rule. Emergency rules will allow setting ((~~64 hours~~)) crab gear in advance of the delayed season opening time.

(d) It is unlawful to fish for or possess Dungeness crab or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward.

AMENDATORY SECTION (Amending WSR 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-52-049 Commercial crab fishery—Gear limits—Coastal. (1) **Coastal crab pot limit.**

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless the person's Dungeness crab coastal fishery license or the equivalent Oregon or California Dungeness crab fishery license is assigned a crab pot limit. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(c) It is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.530, Unlawful use of a nondesignated vessel—Penalty.

(d) It is unlawful for a person to take or fish for Dungeness crab or to deploy crab pots unless the person is in possession of valid documentation issued by the department that specifies the crab pot limit assigned to the license. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(e) Beginning May 1, it is unlawful to leave Dungeness crab pots deployed in Grays Harbor, Willapa Bay, Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington for more than 21 consecutive days without making a Dungeness crab landing.

(2) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (Catch Area 60B) with more than 200 shellfish pots in the aggregate. It is unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Determination of coastal crab pot limits.**

(a) The number of crab pots assigned to a Washington Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license is based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon, and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, which show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria is used to determine and assign a crab pot limit to a Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15, 1997; from December 1, 1997, through September 15, 1998; and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license determines the crab pot limit for that license. A crab pot limit of 300 will be assigned to a license with landings totaling up to 35,999 pounds and a crab pot limit of 500 will be assigned to a license with landings totaling 36,000 pounds of crab or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a crab pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon department of fish and wildlife and/or the California department of fish and game.

(iii) Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a crab pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A crab pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership

of the licenses. No vessel named on a Dungeness crab fishery license will be assigned more than one coastal crab pot limit.

(4) **Appeals of coastal crab pot limits.** An appeal of a crab pot limit by a coastal commercial license holder must be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department will remain in effect until such time as the appeal process is concluded.

WSR 14-21-168
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed October 22, 2014, 8:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-14-001.

Title of Rule and Other Identifying Information: WAC 390-16-071 Annual report of major contributors and persons making independent expenditures, 390-20-110 Forms for lobbyist employers report, 390-24-010 Forms for statement of financial affairs, 390-24-020 Forms for amending statement of financial affairs, 390-24-202 Report of compensation from sales commission, and 390-24-301 Changes in dollar amounts of reporting thresholds and value codes.

Hearing Location(s): 711 Capitol Way, Room 206, Olympia, WA 98504, on December 4, 2014, at 9:30 a.m.

Date of Intended Adoption: December 4, 2014.

Submit Written Comments to: Lori Anderson, (mail) P.O. Box 40908, Olympia, WA 98504-0908, (physical address) 711 Capitol Way, Room 206, Olympia, WA, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by November 26, 2014.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail jana.greer@pdc.wa.gov or phone (360) 753-1980.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The dollar amounts used for disclosing financial affairs of candidates, elected officials, and executive state officers are being adjusted for inflation. Proposed amendments to WAC 390-16-071, 390-20-110, 390-24-010, 390-24-020, 390-24-202, and 390-24-301 adjust dollar amounts as directed by RCW 42.17A.125(2). Additionally, instructions pertaining to disclosure of legislative reception food and beverage are inserted in WAC 390-20-010 and 390-20-020 (PDC Forms F-1 and F-1A, respectively).*

*Under separate notice, the commission has scheduled a December 4, 2014, hearing to consider rules relating to lobbyist disclosure. That rule making necessitates a proposed "housekeeping" amendment to WAC 390-24-010 and 390-24-020 to insert instructions on the F-1 and F-1A forms explaining that disclosing the cost of food and beverage served at a qualifying legislative reception is not required.

Reasons Supporting Proposal: RCW 42.17A.125(2) authorizes the commission to make inflationary adjustments to these dollar amounts at least once every five years. Stakeholders have encouraged the commission to make the proposed adjustments, since it has been six years since the commission's last adjustments.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.125(2).

Statute Being Implemented: RCW 42.17A.710.

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: No increased costs to the agency are expected.

Name of Proponent: Public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; and Enforcement: Andrea Doyle, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.135 and 34.05.320.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make the section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and, to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

October 22, 2014
Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-16-071 Annual report of major contributors and persons making independent expenditures. (1) Any person, other than an individual (a) who made contributions to state office candidates and statewide ballot proposition committees totaling more than the aggregate amount during the preceding calendar year for contributions referenced in WAC 390-05-400, code section .180(1), or (b) who made independent expenditures regarding state office candidates and statewide ballot propositions totaling more than the aggregate amount during the preceding calendar year for independent expenditures referenced in WAC 390-05-400, code section .180(1), shall file with the commission an annual report required pursuant to RCW 42.17A.630. This report shall not be required of a lobbyist employer filing an annual L-3 report pursuant to RCW 42.17A.630 or of a candidate's authorized committee or a political committee provided the information has been properly reported pursuant to RCW 42.17A.235 and 42.17A.240.

(2) The report is entitled "Special Political Expenditures" and is designated "C-7" revised ((~~12/08~~)) 11/14. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504. Any attachments shall be on 8-1/2" x 11" white paper.

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

Special Political Expenditures

C7
12/08

PDC OFFICE USE

1. Name (Use complete company, association, union or entity name.)

Attention (Identify person to whom inquiries about the information below should be directed.)

Mailing Address | Telephone ( ) -

City | State | Zip + 4

THIS REPORT MUST BE FILED BY THE LAST DAY OF FEBRUARY. Disclose all payments or expenditures the reporting entity made and accrued during the previous calendar year for the types of activities described below. Complete all sections. Use "none" or "0" when applicable. Follow the directions on the attached instructions.

Summary of Expenditures **Amount**

2. Political contributions to candidates for legislative or statewide executive office, committees supporting or opposing these candidates, or committees supporting or opposing statewide ballot measures. Also complete Item 8.

   a. Aggregate contributions made by the filer. _____

   b. If contributions were made by a political committee associated, affiliated or sponsored by the employer, show the PAC name below. (Information reported by the PAC on C-4 reports need not be again included as part of this report.)
   Name of PAC _____ _____

3. Independent expenditures supporting or opposing a candidate for legislative or statewide executive office or a statewide ballot measure. Show aggregate amount. Also complete Item 9.

4. Expenditures for entertainment, gifts, tickets, passes, transportation and travel expenses (including meals, lodging and related expenses) provided to legislators, state officials, state employees and members of their immediate families. Show aggregate amount. Also complete Item 10. _____

5. Expenditures to or on behalf of legislators, state officials, their spouses and dependents for the purpose of influencing, honoring or benefiting the legislator or official. Show aggregate amount. Also complete Item 13. _____

6. Other expenditures related to lobbying state officials, whether payment is made to, through or on behalf of a registered lobbyist. Attach list itemizing each expense. Show date, recipient, purpose and amount. _____

7. Total Reportable Expenses (Items 2 thru 6) _____

Itemized Expenditures

8. Contributions totaling over $25 to a legislative or statewide executive office candidate, a committee formed to support or oppose one of these candidates or a committee supporting or opposing a statewide ballot measure.

Name of Recipient	Amount	Date
	$	

☐ Information continued on attached pages

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

Special Political Expenditures

C7
11/14

PDC OFFICE USE

1. Name (Use complete company, association, union or entity name.)

Attention (Identify person to whom inquiries about the information below should be directed.)

Mailing Address | Telephone ( ) -

City | State | Zip + 4

THIS REPORT MUST BE FILED BY THE LAST DAY OF FEBRUARY. Disclose all payments or expenditures the reporting entity made and accrued during the previous calendar year for the types of activities described below. Complete all sections. Use "none" or "0" when applicable. Follow the directions on the attached instructions.

Summary of Expenditures — **Amount**

2. Political contributions to candidates for legislative or statewide executive office, committees supporting or opposing these candidates, or committees supporting or opposing statewide ballot measures. Also complete Item 8.

   a. Aggregate contributions made by the filer. _____

   b. If contributions were made by a political committee associated, affiliated or sponsored by the employer, show the PAC name below. (Information reported by the PAC on C-4 reports need not be again included as part of this report.)
   Name of PAC _____ _____

3. Independent expenditures supporting or opposing a candidate for legislative or statewide executive office or a statewide ballot measure. Show aggregate amount. Also complete Item 9.

4. Expenditures for entertainment, gifts, tickets, passes, transportation and travel expenses (including meals, lodging and related expenses) provided to legislators, state officials, state employees and members of their immediate families. Show aggregate amount. Also complete Item 10. _____

5. Expenditures to or on behalf of legislators, state officials, their spouses and dependents for the purpose of influencing, honoring or benefiting the legislator or official. Show aggregate amount. Also complete Item 13. _____

6. Other expenditures related to lobbying state officials, whether payment is made to, through or on behalf of a registered lobbyist. Attach list itemizing each expense. Show date, recipient, purpose and amount. _____

7. Total Reportable Expenses (Items 2 thru 6) _____

Itemized Expenditures

8. Contributions totaling over $25 to a legislative or statewide executive office candidate, a committee formed to support or oppose one of these candidates or a committee supporting or opposing a statewide ballot measure.

Name of Recipient	Amount	Date
	$	

☐ Information continued on attached pages

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9. Independent expenditures in support of or opposition to a) a legislative or statewide executive office candidate or b) a statewide ballot measure. See instructions for definition of "independent expenditure."

Candidate's Name, Office Sought & Party or Ballot Measure & Brief Description	Amount	Date and Description of Expense (Note if Support or Oppose)
	$	

☐ Information continued on attached pages

10. Entertainment, gifts, tickets, passes, transportation and travel expenses (including meals, lodging and related expenses) provided to legislators, state officials, state employees and members of their immediate families.

Name and Title	Cost or Value	Date and Description of Entertainment, Gift or Travel
	$	

☐ Information continued on attached pages

11. Compensation of $2,000 or more during the preceding calendar year for employment or professional services paid to state elected officials, successful candidates for state office and each member of their immediate family.

Name	Relationship to Candidate or Official, if Family Member	Amount (Code)	Description of Consideration or Services Exchanged for Compensation

☐ Information continued on attached pages

12. Compensation of $2,000 or more during the preceding calendar year for professional services paid to any corporation, partnership, joint venture, association or other entity in which state elected official, successful state candidate or member of their immediate family hold office, partnership, directorship or ownership interest of 10% or more.

Firm Name	Person's Name	Amount (Code)	Description of Consideration or Services Exchanged for Compensation

☐ Information continued on attached pages

13. Any expenditure, not otherwise reported, made directly or indirectly to a state elected official, successful candidate for state office or member of their immediate family, if made to honor, influence or benefit the person because of his or her official position.

Name	Amount	Date and Description of Expense
	$	

☐ Information continued on attached pages

14. This report must be certified by the president, secretary-treasurer or similar officer of reporting entity.

Certification: I certify that this report is true, complete and correct to the best of my knowledge.	Signature of Officer	Date
Printed Name and Title of Officer:		

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9. Independent expenditures in support of or opposition to a) a legislative or statewide executive office candidate or b) a statewide ballot measure. See instructions for definition of "independent expenditure."

Candidate's Name, Office Sought & Party or Ballot Measure & Brief Description	Amount	Date and Description of Expense (Note if Support or Oppose)
	$	

☐ Information continued on attached pages

10. Entertainment, gifts, tickets, passes, transportation and travel expenses (including meals, lodging and related expenses) provided to legislators, state officials, state employees and members of their immediate families.

Name and Title	Cost or Value	Date and Description of Entertainment, Gift or Travel
	$	

☐ Information continued on attached pages

11. Compensation of $2,400 or more during the preceding calendar year for employment or professional services paid to state elected officials, successful candidates for state office and each member of their immediate family.

Name	Relationship to Candidate or Official, if Family Member	Amount (Code)	Description of Consideration or Services Exchanged for Compensation

☐ Information continued on attached pages

12. Compensation of $2,400 or more during the preceding calendar year for professional services paid to any corporation, partnership, joint venture, association or other entity in which state elected official, successful state candidate or member of their immediate family hold office, partnership, directorship or ownership interest of 10% or more.

Firm Name	Person's Name	Amount (Code)	Description of Consideration or Services Exchanged for Compensation

☐ Information continued on attached pages

13. Any expenditure, not otherwise reported, made directly or indirectly to a state elected official, successful candidate for state office or member of their immediate family, if made to honor, influence or benefit the person because of his or her official position.

Name	Amount	Date and Description of Expense
	$	

☐ Information continued on attached pages

14. This report must be certified by the president, secretary-treasurer or similar officer of reporting entity.

Certification: I certify that this report is true, complete and correct to the best of my knowledge.	Signature of Officer	Date
Printed Name and Title of Officer:		

AMENDATORY SECTION (Amending WSR 09-01-063, filed 12/11/08, effective 1/11/09)

WAC 390-20-110 Forms for lobbyist employers report. The official form for statement by employers of registered lobbyists as required by RCW 42.17.180 is designated "L-3," revised ((~~1/09~~)) 11/14. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, 711 Capitol Way, Room 206, Evergreen Plaza Building, P.O. Box 40908, Olympia, Washington, 98504-0908. Any paper attachments shall be on 8-1/2" x 11" white paper.

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
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OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

Employer's Lobbying Expenses

L3 1/09

THIS SPACE FOR OFFICE USE

1. Employer's Name (Use complete company, association, union or entity name.)

Attention (Identify person to whom inquiries about the information below should be directed; NOT the lobbyist.)

Mailing Address | Telephone ( ) -

City | State | Zip + 4 | E-Mail Address | Year Report Covers

THIS REPORT MUST BE FILED BY THE LAST DAY OF FEBRUARY. Include expenditures made and accrued during the previous calendar year for lobbying the Washington State Legislature and/or any state agency. Complete all sections. Use "none" or "0" when applicable.

2. Identify each of your lobbyists/lobbying firms below. **In column 1,** show the full amount of salary or fee each earned for lobbying. **In column 2,** show the full amount paid (plus obligated) for other lobbying related expenses that were made by or through the lobbyist and reported by the lobbyist on the monthly L-2 report (e.g., contributions to legislative candidates, reimbursement for entertainment expenses, etc.). Compute the subtotals across and down the columns; put the grand total of expenses incurred by or through lobbyists in the space designated.

Names of Registered Lobbyists (if payments were to lobbying firm, list firm name)	**Col 1-Salary** $	**Col 2-Other** $	**Total Amount** $
Total From Attached Page			
☐ Information continued on attached pages — Total Expenses By or Through Lobbyists			$

DO NOT INCLUDE EXPENDITURES ALREADY ACCOUNTED FOR IN ITEM 2 ABOVE when completing Items 3 through 7 below.

3. Other expenditures made by the employer for lobbying purposes. **Show total expenditures made/accrued:**
   a. to vendors on behalf of or in support of registered lobbyists (e.g., entertainment credit card purchases); $
   b. to or on behalf of expert witnesses or others retained to provide lobbying services who offer specialized knowledge or expertise that assists the employer's lobbying effort;
   c. for entertainment, tickets, passes, travel expenses (e.g., transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families; (Also complete Item 9.)
   d. for composing, designing, producing and distributing informational materials for use primarily to influence legislation; and
   e. for grass roots lobbying expenses, including those previously reported by employer on Form L-6, and payments for lobbying communications to clients/customers (other than to corporate stockholders and members of an organization or union).
4. Political contributions to candidates for legislative or statewide executive office, committees supporting or opposing these candidates, or committees supporting or opposing statewide ballot measures. (Also complete Item 10.)
   a. Contributions made directly by the employer, including those previously reported on PDC Form L-3c.
   b. If contributions were made by a political committee associated, affiliated or sponsored by the employer, show the PAC name below. (Information reported by the PAC on C-4 reports need not be again included as part of this L-3 report.)

   Name of PAC _____
5. Independent expenditures supporting or opposing a candidate for legislative or statewide executive office or a statewide ballot measure. (Also complete Item 11.)
6. Expenditures to or on behalf of legislators, state officials, or their spouse, registered domestic partner and dependents for the purpose of influencing, honoring or benefiting the legislator or official. (Normal course of business payments are not reportable.) (Also complete Item 14.)
7. Other lobbying-related expenditures, whether through or on behalf of a registered lobbyist. Attach list itemizing each expense (i.e., show date, recipient, purpose and amount). Do not include payments accounted for above.

Total Lobbying Expenses (Items 2 thru 7) $

8. This report must be certified by the president, secretary-treasurer or similar office of lobbying employer.

Certification: I certify that this report is true, complete and correct to the best of my knowledge.

Signature of Employer Officer | Date

Printed Name and Title of Officer:

CONTINUE ON REVERSE

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
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TOLL FREE 1-877-601-2828

Employer's Lobbying Expenses

L3
11/14

THIS SPACE FOR OFFICE USE

1. Employer's Name (Use complete company, association, union or entity name.)

Attention (Identify person to whom inquiries about the information below should be directed; NOT the lobbyist.)

Mailing Address | Telephone ( ) -

City | State | Zip + 4 | E-Mail Address | Year Report Covers

THIS REPORT MUST BE FILED BY THE LAST DAY OF FEBRUARY. Include expenditures made and accrued during the previous calendar year for lobbying the Washington State Legislature and/or any state agency. Complete all sections. Use "none" or "0" when applicable.

2. Identify each of your lobbyists/lobbying firms below. **In column 1,** show the full amount of salary or fee each earned for lobbying. **In column 2,** show the full amount paid (plus obligated) for other lobbying related expenses that were made by or through the lobbyist and reported by the lobbyist on the monthly L-2 report (e.g., contributions to legislative candidates, reimbursement for entertainment expenses, etc.). Compute the subtotals across and down the columns; put the grand total of expenses incurred by or through lobbyists in the space designated.

Names of Registered Lobbyists (if payments were to lobbying firm, list firm name)	**Col 1-Salary** $	**Col 2-Other** $	**Total Amount** $
Total From Attached Page			

☐ Information continued on attached pages — Total Expenses By or Through Lobbyists $

DO NOT INCLUDE EXPENDITURES ALREADY ACCOUNTED FOR IN ITEM 2 ABOVE when completing Items 3 through 7 below.

3. Other expenditures made by the employer for lobbying purposes. **Show total expenditures made/accrued:**
   a. to vendors on behalf of or in support of registered lobbyists (e.g., entertainment credit card purchases); $
   b. to or on behalf of expert witnesses or others retained to provide lobbying services who offer specialized knowledge or expertise that assists the employer's lobbying effort;
   c. for entertainment, tickets, passes, travel expenses (e.g., transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families; (Also complete Item 9.)
   d. for composing, designing, producing and distributing informational materials for use primarily to influence legislation; and
   e. for grass roots lobbying expenses, including those previously reported by employer on Form L-6, and payments for lobbying communications to clients/customers (other than to corporate stockholders and members of an organization or union).
4. Political contributions to candidates for legislative or statewide executive office, committees supporting or opposing these candidates, or committees supporting or opposing statewide ballot measures. (Also complete Item 10.)
   a. Contributions made directly by the employer, including those previously reported on PDC Form L-3c.
   b. If contributions were made by a political committee associated, affiliated or sponsored by the employer, show the PAC name below. (Information reported by the PAC on C-4 reports need not be again included as part of this L-3 report.)

   Name of PAC _____
5. Independent expenditures supporting or opposing a candidate for legislative or statewide executive office or a statewide ballot measure. (Also complete Item 11.)
6. Expenditures to or on behalf of legislators, state officials, or their spouse, registered domestic partner and dependents for the purpose of influencing, honoring or benefiting the legislator or official. (Normal course of business payments are not reportable.) (Also complete Item 14.)
7. Other lobbying-related expenditures, whether through or on behalf of a registered lobbyist. Attach list itemizing each expense (i.e., show date, recipient, purpose and amount). Do not include payments accounted for above.

Total Lobbying Expenses (Items 2 thru 7) $

8. This report must be certified by the president, secretary-treasurer or similar office of lobbying employer.

Certification: I certify that this report is true, complete and correct to the best of my knowledge.

Signature of Employer Officer | Date

Printed Name and Title of Officer:

CONTINUE ON REVERSE

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Page 2 L3

Employer's Name	Year report covers:

9. Entertainment, tickets, passes, travel expenses (including transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families. See instruction manual for details.

Name and Title	Cost or Value	Date and Description of Expense
	$	

☐ Information continued on attached pages

10. Contributions (not reported by the lobbyist) totaling over $25 to a legislative or statewide executive office candidate, a committee formed to support or oppose one of these candidates or a committee supporting or opposing a statewide ballot measure. Do not list employer-affiliated PAC contributions.

Name of Recipient	Amount	Date (and, if In-Kind, Description)
	$	

☐ Information continued on attached pages

11. Independent expenditures in support of or opposition to a) a legislative or statewide executive office candidate or b) a statewide ballot proposition. **See instruction manual for definition of "independent expenditure."**

Candidate's Name, Office Sought & Party or Ballot Proposition Number & Brief Description	Amount	Date and Description of Expense (Note if Support or Oppose)
	$	

☐ Information continued on attached pages

12. Compensation of $2,000 or more during the preceding calendar year for employment or professional services paid to state elected officials, successful candidates for state office and each member of their immediate family.

Name	Relationship to Candidate or Elected Official if Member of Family	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation

☐ Information continued on attached pages

13. Compensation of $2,000 or more during the preceding calendar year for professional services paid to any corporation, partnership, joint venture, association or other entity in which state elected official, successful state candidate or member of their immediate family hold office, partnership, directorship or ownership interest of 10% or more.

Firm Name	Person's Name	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation

☐ Information continued on attached pages

14. Any expenditure, not otherwise reported, made directly or indirectly to a state elected official, successful candidate for state office or member of their immediate family, if made to honor, influence or benefit the person because of his or her official position.

Name	Amount	Date and Purpose
	$	

☐ Information continued on attached pages

****DOLLAR CODE AMOUNT**

A - $1 to $3,999
B - $4,000 to $19,999
C - $20,000 to $39,999
D - $40,000 to $99,999
E - $100,000 or more

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Page 2 L3

Employer's Name	Year report covers:

9. Entertainment, tickets, passes, travel expenses (including transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families. See instruction manual for details.

Name and Title	Cost or Value	Date and Description of Expense
	$	

☐ Information continued on attached pages

10. Contributions (not reported by the lobbyist) totaling over $25 to a legislative or statewide executive office candidate, a committee formed to support or oppose one of these candidates or a committee supporting or opposing a statewide ballot measure. Do not list employer-affiliated PAC contributions.

Name of Recipient	Amount	Date (and, if In-Kind, Description)
	$	

☐ Information continued on attached pages

11. Independent expenditures in support of or opposition to a) a legislative or statewide executive office candidate or b) a statewide ballot proposition. **See instruction manual for definition of "independent expenditure."**

Candidate's Name, Office Sought & Party or Ballot Proposition Number & Brief Description	Amount	Date and Description of Expense (Note if Support or Oppose)
	$	

☐ Information continued on attached pages

12. Compensation of $2,400 or more during the preceding calendar year for employment or professional services paid to state elected officials, successful candidates for state office and each member of their immediate family.

Name	Relationship to Candidate or Elected Official if Member of Family	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation

☐ Information continued on attached pages

13. Compensation of $2,400 or more during the preceding calendar year for professional services paid to any corporation, partnership, joint venture, association or other entity in which state elected official, successful state candidate or member of their immediate family hold office, partnership, directorship or ownership interest of 10% or more.

Firm Name	Person's Name	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation

☐ Information continued on attached pages

14. Any expenditure, not otherwise reported, made directly or indirectly to a state elected official, successful candidate for state office or member of their immediate family, if made to honor, influence or benefit the person because of his or her official position.

Name	Amount	Date and Purpose
	$	

☐ Information continued on attached pages

****DOLLAR CODE AMOUNT**

A - $1 to $4,499
B - $4,500 to $23,999
C - $24,000 to $47,999
D - $48,000 to $119,999
E - $120,000 or more

INFORMATION CONTINUED

(Use this page if you need additional space for Items 2 or 9)

L3

Employer's Name

Year report covers:

2. **Names of Registered Lobbyists**	**Col 1-Salary** $	**Col 2-Other** $	**Total Amount** $
Total From This Page			

9. Entertainment, etc.

Name and Title	Cost or Value $	Date and Description of Expense

INFORMATION CONTINUED

(Use this page if you need additional space for Items 10 or 11)

L3

Employer's Name	Year report covers:

10. Contributions

Name of Recipient	Amount	Date (and, if In-Kind, Description)
	$	

11. Independent expenditures

Candidate's Name, Office Sought & Party or Ballot Proposition Number & Brief Description	Amount	Date and Description of Expense (Note if Support or Oppose)
	$	

INFORMATION CONTINUED

L3

(Use this page if you need additional space for Items 12 thru 14)

Employer's Name	Year report covers:

12. Compensation of $2,400 or more for employment, etc.

Name	Relationship to Candidate or Elected Official if Member of Family	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation

13. Compensation of $2,400 or more for professional services

Firm Name	Person's Name	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation

14. Any expenditure not otherwise reported

Name	Amount	Date and Purpose
	$	

**DOLLAR CODE AMOUNT

A - $1 to $4,499
B - $4,500 to $23,999
C - $24,000 to $47,999

**DOLLAR CODE AMOUNT

D - $48,000 to $119,999
E - $120,000 or more

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-24-010 Forms for statement of financial affairs. The official form for statements of financial affairs as required by RCW 42.17A.700 is designated "F-1," revised ((~~1/12~~)) 1/15. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, 711 Capitol Way, Room 206, Evergreen Plaza Building, P.O. Box 40908, Olympia, Washington 98504-0908. Any paper attachments must be on 8-1/2" x 11" white paper.

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711 CAPITOL WAY RM 206
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TOLL FREE 1-877-601-2828

PDC FORM **F-1** (1/12)

PERSONAL FINANCIAL AFFAIRS STATEMENT

POST MARK — PDC OFFICE USE — RECEIVED

Refer to instruction manual for detailed assistance and examples.

Deadlines: **Incumbent elected and appointed officials -- by April 15. Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position.**

SEND REPORT TO PUBLIC DISCLOSURE COMMISSION

DOLLAR CODE	AMOUNT
A	$1 to $3,999
B	$4,000 to $19,999
C	$20,000 to $39,999
D	$40,000 to $99,999
E	$100,000 or more

Last Name | First | Middle Initial

Mailing Address (Use PO Box or Work Address) *

City | County | Zip + 4

Names of immediate family members, including registered domestic partner. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse or registered domestic partner. See F-1 manual for details.

Filing Status (Check only one box.)

- ☐ An elected or state appointed official filing annual report
- ☐ Final report as an elected official. Term expired: _____
- ☐ Candidate running in an election: month _____ year _____
- ☐ Newly appointed to an elective office
- ☐ Newly appointed to a state appointive office
- ☐ Professional staff of the Governor's Office and the Legislature

Office Held or Sought

Office title: _____

County, city, district or agency of the office, name and number: _____

Position number: _____

Term begins: _____ ends: _____

1 INCOME **List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member, including registered domestic partner, received $2,000 or more during the period. Include stock options received during the reporting period that had a value of $2,000 or more. (Report interest and dividends in Item 3.)**

Show Self (S) Spouse (SP/DP) Dependent (D)	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)

Check Here ☐ if continued on attached sheet

2 REAL ESTATE **List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over $10,000 in which you or a family member, including registered domestic partner, held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)**

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser		Nature and Amount (Use Code) of Payment or Consideration Received	
Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms	Security Given	Mortgage Amount - (Use Code) Original / Current
All Other Property Entirely or Partially Owned					

Check here ☐ if continued on attached sheet

CONTINUE ON NEXT PAGE

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711 CAPITOL WAY RM 206
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PDC FORM **F-1** (1/15)

PERSONAL FINANCIAL AFFAIRS STATEMENT

POST MARK — PDC OFFICE USE — RECEIVED

Refer to instruction manual for detailed assistance and examples.

Deadlines: Incumbent elected and appointed officials -- by April 15. Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position.

SEND REPORT TO PUBLIC DISCLOSURE COMMISSION

DOLLAR CODE	AMOUNT
A	$1 to $4,499
B	$4,500 to $23,999
C	$24,000 to $47,999
D	$48,000 to $119,999
E	$120,000 or more

Last Name | First | Middle Initial

Mailing Address (Use PO Box or Work Address) *

City | County | Zip + 4

Names of immediate family members, including registered domestic partner. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse or registered domestic partner. See F-1 manual for details.

Filing Status (Check only one box.)

- ☐ An elected or state appointed official filing annual report
- ☐ Final report as an elected official. Term expired: _____
- ☐ Candidate running in an election: month _____ year _____
- ☐ Newly appointed to an elective office
- ☐ Newly appointed to a state appointive office
- ☐ Professional staff of the Governor's Office and the Legislature

Office Held or Sought

Office title: _____

County, city, district or agency of the office, name and number: _____

Position number: _____

Term begins: _____ ends: _____

1 INCOME

List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member, including registered domestic partner, received $2,400 or more during the period. Include stock options received during the reporting period that had a value of $2,400 or more. (Report interest and dividends in Item 3.)

Show Self (S) Spouse (SP/DP) Dependent (D)	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)

Check Here ☐ if continued on attached sheet

2 REAL ESTATE

List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over $12,000 in which you or a family member, including registered domestic partner, held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser		Nature and Amount (Use Code) of Payment or Consideration Received	
Property Purchased or Interest Acquired		**Creditor's Name/Address**	**Payment Terms**	**Security Given**	**Mortgage Amount - (Use Code) Original / Current**
All Other Property Entirely or Partially Owned Check here ☐ if continued on attached sheet					

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3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS — **List bank and savings accounts, insurance policies, stock, bonds and other intangible property (including but not limited to stock options) held during the reporting period.**

	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)
A. Name and address of each bank or financial institution in which you, a family member, including registered domestic partner, had an account over $20,000 any time during the report period.			
B. Name and address of each insurance company where you, a family member, including registered domestic partner, had a policy with a cash or loan value over $20,000 during the period.			
C. Name and address of each company, association, government agency, etc. in which you, a family member, including registered domestic partner, owned or had a financial interest worth over $2,000. Include stocks, bonds, ownership, retirement plan, IRA, notes, stock options, and other intangible property. If you, your spouse, registered domestic partner and/or dependents had decision making authority regarding individual assets/investments list each asset or investment, the value and any income amount. EXAMPLE: If you self-directed an investment account identify each stock or other asset in that account.			

Check here ☐ if continued on attached sheet.

4 CREDITORS — **List each creditor you or a family member, including registered domestic partner, owed $2,000 or more any time during the period. Don't include retail charge accounts, credit cards, or mortgages or real estate reported in Item 2.**

Creditor's Name and Address	Terms of Payment	Security Given	AMOUNT (USE CODE) Original	Present

Check here ☐ if continued on attached sheet.

5 All filers answer questions A thru D below. If the answer is YES to any of these questions, the F-1 Supplement must also be completed as part of this report. If all answers are NO and you are a candidate for state or local office, an appointee to a vacant elective office, or a state executive officer filing your initial report, no F-1 Supplement is required.

Incumbent elected officials and state executive officers filing an annual financial affairs report also must answer question E. An F-1 Supplement is required of these officeholders unless all answers to questions A thru E are NO.

A. At any time during the reporting period were you, your spouse, registered domestic partner or dependents (1) an officer, director, general partner or trustee of any corporation, company, union, association, joint venture or other entity or (2) a partner or member of any limited partnership, limited liability partnership, limited liability company or similar entity including but not limited to a professional limited liability company? ____ If yes, complete Supplement, Part A.

B. Did you, your spouse, registered domestic partner or dependents have an ownership of 10% or more in any company, corporation, partnership, joint venture or other business at any time during the reporting period? ____ If yes, complete Supplement, Part A.

C. Did you, your spouse, registered domestic partner or dependents own a business at any time during the reporting period? ____ If yes, complete Supplement, Part A.

D. Did you, your spouse, registered domestic partner or dependents prepare, promote or oppose state legislation, rules, rates or standards for compensation or deferred compensation (other than pay for a currently-held public office) at any time during the reporting period? ____ If yes, complete Supplement, Part B.

E. **Only for Persons Filing Annual Report.** Regarding the receipt of items not provided or paid for by your governmental agency during the previous calendar year: 1) Did you, your spouse, registered domestic partner or dependents (or any combination thereof) accept a gift of food or beverages costing over $50 per occasion? ____ or 2) Did any source other than your governmental agency provide or pay in whole or in part for you, your spouse, registered domestic partner and/or dependents to travel or to attend a seminar or other training? ____ If yes to either or both questions, complete Supplement, Part C.

ALL FILERS EXCEPT CANDIDATES. Check the appropriate box.

☐ I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.

☐ I hold a local elected office. I have read and am familiar with RCW 42.17A.555 regarding the use of public facilities in campaigns.

***CANDIDATES:** Do not use public agency addresses or telephone numbers for contact information.

CERTIFICATION: I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.

Signature Date

Contact Telephone: ( ) *

Email:_____(work) *

Email:_____(Home) Optional

REPORT NOT ACCEPTABLE WITHOUT FILER'S SIGNATURE

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3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS — **List bank and savings accounts, insurance policies, stock, bonds and other intangible property (including but not limited to stock options) held during the reporting period.**

	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)
A. Name and address of each bank or financial institution in which you, a family member, including registered domestic partner, had an account over $24,000 any time during the report period.			
B. Name and address of each insurance company where you, a family member, including registered domestic partner, had a policy with a cash or loan value over $24,000 during the period.			
C. Name and address of each company, association, government agency, etc. in which you, a family member, including registered domestic partner, owned or had a financial interest worth over $2,400. Include stocks, bonds, ownership, retirement plan, IRA, notes, stock options, and other intangible property. If you, your spouse, registered domestic partner and/or dependents had decision making authority regarding individual assets/investments list each asset or investment, the value and any income amount. EXAMPLE: If you self-directed an investment account identify each stock or other asset in that account.			

Check here ☐ if continued on attached sheet.

4 CREDITORS — **List each creditor you or a family member, including registered domestic partner, owed $2,400 or more any time during the period. Don't include retail charge accounts, credit cards, or mortgages or real estate reported in Item 2.**

Creditor's Name and Address	Terms of Payment	Security Given	AMOUNT (USE CODE) Original	Present

Check here ☐ if continued on attached sheet.

5 All filers answer questions A thru D below. If the answer is YES to any of these questions, the F-1 Supplement must also be completed as part of this report. If all answers are NO and you are a candidate for state or local office, an appointee to a vacant elective office, or a state executive officer filing your initial report, no F-1 Supplement is required.

Incumbent elected officials and state executive officers filing an annual financial affairs report also must answer question E. An F-1 Supplement is required of these officeholders unless all answers to questions A thru E are NO.

A. At any time during the reporting period were you, your spouse, registered domestic partner or dependents (1) an officer, director, general partner or trustee of any corporation, company, union, association, joint venture or other entity or (2) a partner or member of any limited partnership, limited liability partnership, limited liability company or similar entity including but not limited to a professional limited liability company? _____ If yes, complete Supplement, Part A.

B. Did you, your spouse, registered domestic partner or dependents have an ownership of 10% or more in any company, corporation, partnership, joint venture or other business at any time during the reporting period? _____ If yes, complete Supplement, Part A.

C. Did you, your spouse, registered domestic partner or dependents own a business at any time during the reporting period? _____ If yes, complete Supplement, Part A.

D. Did you, your spouse, registered domestic partner or dependents prepare, promote or oppose state legislation, rules, rates or standards for compensation or deferred compensation (other than pay for a currently-held public office) at any time during the reporting period? _____ If yes, complete Supplement, Part B.

E. **Only for Persons Filing Annual Report.** Regarding the receipt of items not provided or paid for by your governmental agency during the previous calendar year: 1) Did you, your spouse, registered domestic partner or dependents (or any combination thereof) accept a gift of food or beverages costing over $50 per occasion? _____ or 2) Did any source other than your governmental agency provide or pay in whole or in part for you, your spouse, registered domestic partner and/or dependents to travel or to attend a seminar or other training? _____ If yes to either or both questions, complete Supplement, Part C.

ALL FILERS EXCEPT CANDIDATES. Check the appropriate box.

☐ I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.

☐ I hold a local elected office. I have read and am familiar with RCW 42.17A.555 regarding the use of public facilities in campaigns.

***CANDIDATES:** Do not use public agency addresses or telephone numbers for contact information.

CERTIFICATION: I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.

Signature Date

Contact Telephone: ( ) *

Email:_____(work) *

Email:_____(Home) Optional

REPORT NOT ACCEPTABLE WITHOUT FILER'S SIGNATURE

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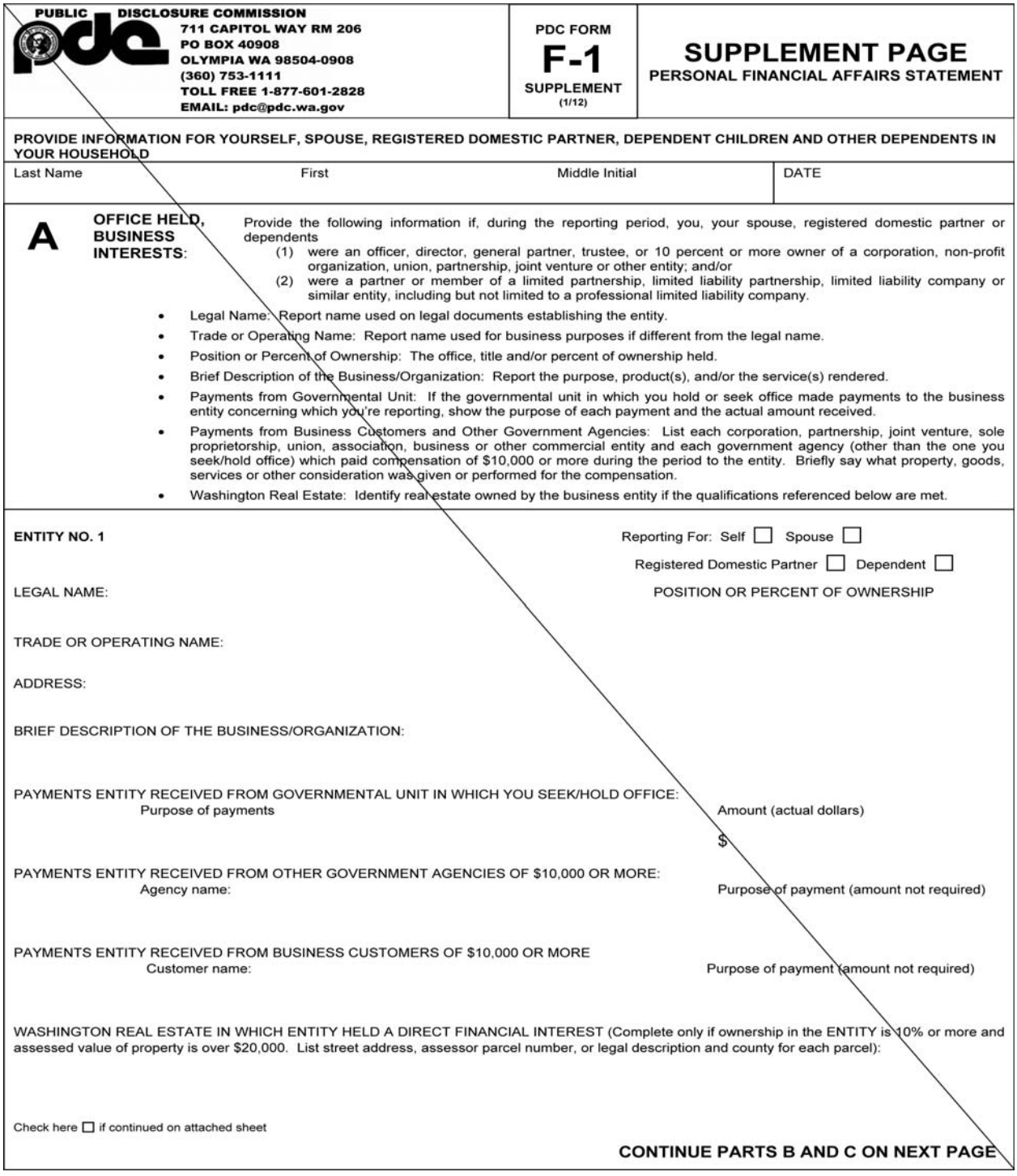

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828
EMAIL: pdc@pdc.wa.gov

PDC FORM F-1 SUPPLEMENT (1/12)

SUPPLEMENT PAGE
PERSONAL FINANCIAL AFFAIRS STATEMENT

PROVIDE INFORMATION FOR YOURSELF, SPOUSE, REGISTERED DOMESTIC PARTNER, DEPENDENT CHILDREN AND OTHER DEPENDENTS IN YOUR HOUSEHOLD

Last Name | First | Middle Initial | DATE

A OFFICE HELD, BUSINESS INTERESTS: Provide the following information if, during the reporting period, you, your spouse, registered domestic partner or dependents

(1) were an officer, director, general partner, trustee, or 10 percent or more owner of a corporation, non-profit organization, union, partnership, joint venture or other entity; and/or
(2) were a partner or member of a limited partnership, limited liability partnership, limited liability company or similar entity, including but not limited to a professional limited liability company.

- Legal Name: Report name used on legal documents establishing the entity.
- Trade or Operating Name: Report name used for business purposes if different from the legal name.
- Position or Percent of Ownership: The office, title and/or percent of ownership held.
- Brief Description of the Business/Organization: Report the purpose, product(s), and/or the service(s) rendered.
- Payments from Governmental Unit: If the governmental unit in which you hold or seek office made payments to the business entity concerning which you're reporting, show the purpose of each payment and the actual amount received.
- Payments from Business Customers and Other Government Agencies: List each corporation, partnership, joint venture, sole proprietorship, union, association, business or other commercial entity and each government agency (other than the one you seek/hold office) which paid compensation of $10,000 or more during the period to the entity. Briefly say what property, goods, services or other consideration was given or performed for the compensation.
- Washington Real Estate: Identify real estate owned by the business entity if the qualifications referenced below are met.

ENTITY NO. 1

Reporting For: Self ☐ Spouse ☐
Registered Domestic Partner ☐ Dependent ☐

LEGAL NAME: POSITION OR PERCENT OF OWNERSHIP

TRADE OR OPERATING NAME:

ADDRESS:

BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:

PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:
Purpose of payments | Amount (actual dollars)
$

PAYMENTS ENTITY RECEIVED FROM OTHER GOVERNMENT AGENCIES OF $10,000 OR MORE:
Agency name: | Purpose of payment (amount not required)

PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS OF $10,000 OR MORE
Customer name: | Purpose of payment (amount not required)

WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over $20,000. List street address, assessor parcel number, or legal description and county for each parcel):

Check here ☐ if continued on attached sheet

CONTINUE PARTS B AND C ON NEXT PAGE

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PDC FORM
F-1
SUPPLEMENT
(1/15)

SUPPLEMENT PAGE
PERSONAL FINANCIAL AFFAIRS STATEMENT

PROVIDE INFORMATION FOR YOURSELF, SPOUSE, REGISTERED DOMESTIC PARTNER, DEPENDENT CHILDREN AND OTHER DEPENDENTS IN YOUR HOUSEHOLD

Last Name	First	Middle Initial	DATE

A OFFICE HELD, BUSINESS INTERESTS: Provide the following information if, during the reporting period, you, your spouse, registered domestic partner or dependents

(1) were an officer, director, general partner, trustee, or 10 percent or more owner of a corporation, non-profit organization, union, partnership, joint venture or other entity; and/or
(2) were a partner or member of a limited partnership, limited liability partnership, limited liability company or similar entity, including but not limited to a professional limited liability company.

- Legal Name: Report name used on legal documents establishing the entity.
- Trade or Operating Name: Report name used for business purposes if different from the legal name.
- Position or Percent of Ownership: The office, title and/or percent of ownership held.
- Brief Description of the Business/Organization: Report the purpose, product(s), and/or the service(s) rendered.
- Payments from Governmental Unit: If the governmental unit in which you hold or seek office made payments to the business entity concerning which you're reporting, show the purpose of each payment and the actual amount received.
- Payments from Business Customers and Other Government Agencies: List each corporation, partnership, joint venture, sole proprietorship, union, association, business or other commercial entity and each government agency (other than the one you seek/hold office) which paid compensation of $12,000 or more during the period to the entity. Briefly say what property, goods, services or other consideration was given or performed for the compensation.
- Washington Real Estate: Identify real estate owned by the business entity if the qualifications referenced below are met.

ENTITY NO. 1

Reporting For: Self ☐ Spouse ☐
Registered Domestic Partner ☐ Dependent ☐

LEGAL NAME: POSITION OR PERCENT OF OWNERSHIP

TRADE OR OPERATING NAME:

ADDRESS:

BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:

PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:
Purpose of payments — Amount (actual dollars)
$

PAYMENTS ENTITY RECEIVED FROM OTHER GOVERNMENT AGENCIES OF $12,000 OR MORE:
Agency name: — Purpose of payment (amount not required)

PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS OF $12,000 OR MORE
Customer name: — Purpose of payment (amount not required)

WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over $24,000. List street address, assessor parcel number, or legal description and county for each parcel):

Check here ☐ if continued on attached sheet

CONTINUE PARTS B AND C ON NEXT PAGE

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Page 2 **F-1 Supplement**

Name

ENTITY NO. 2

Reporting For: Self ☐ Spouse ☐
Registered Domestic Partner ☐ Dependent ☐

LEGAL NAME: POSITION OR PERCENT OF OWNERSHIP

TRADE OR OPERATING NAME:

ADDRESS:

BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:

PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:
Purpose of payments — Amount (actual dollars) $

PAYMENTS ENTITY RECEIVED FROM OTHER GOVERNMENT AGENCIES OF $10,000 OR MORE:
Agency name: — Purpose of payment (amount not required)

PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS OF $10,000 OR MORE
Customer name: — Purpose of payment (amount not required)

WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over $20,000. List street address, assessor parcel number, or legal description and county for each parcel):

Check here ☐ if continued on attached sheet

B LOBBYING: **List persons for whom you, or any immediate family member, including registered domestic partner, lobbied or prepared state legislation or state rules, rates, or standards for compensation or deferred compensation. Do not list pay from government body in which you are an elected official or professional staff member.**

Person to Whom Services Rendered	Description of Legislation, Rules, Etc.	Compensation (Use Code)
Check here ☐ if continued on attached sheet		

C FOOD TRAVEL SEMINARS **Complete this section if a source other than your own governmental agency paid for or otherwise provided all or a portion of the following items to you, your spouse, registered domestic partner or dependents, or a combination thereof: 1) Food and beverages costing over $50 per occasion; 2) Travel occasions; or 3) Seminars, educational programs or other training.**

Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount	Value (Use Code)
			$	
Check here ☐ if continued on attached sheet				

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Page 2 **F-1 Supplement**

Name

ENTITY NO. 2

Reporting For: Self ☐ Spouse ☐
Registered Domestic Partner ☐ Dependent ☐

LEGAL NAME: POSITION OR PERCENT OF OWNERSHIP

TRADE OR OPERATING NAME:

ADDRESS:

BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:

PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:

Purpose of payments	Amount (actual dollars)
	$

PAYMENTS ENTITY RECEIVED FROM OTHER GOVERNMENT AGENCIES OF $12,000 OR MORE:

Agency name:	Purpose of payment (amount not required)

PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS OF $12,000 OR MORE

Customer name:	Purpose of payment (amount not required)

WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over $24,000. List street address, assessor parcel number, or legal description and county for each parcel):

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Person to Whom Services Rendered	Description of Legislation, Rules, Etc.	Compensation (Use Code)

Check here ☐ if continued on attached sheet

C FOOD TRAVEL SEMINARS **Complete this section if a source other than your own governmental agency paid for or otherwise provided all or a portion of the following items to you, your spouse, registered domestic partner or dependents, or a combination thereof: 1) Food and beverages costing over $50 per occasion, excluding certain receptions as defined in WAC 390-20-020A, L-2 Reporting Guide; 2) Travel occasions; or 3) Seminars, educational programs or other training.**

Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount	Value (Use Code)
			$	

Check here ☐ if continued on attached sheet

Information Continued — F-1 Supplement

Name

ENTITY NO.

Reporting For: Self ☐ Spouse ☐
Registered Domestic Partner ☐ Dependent ☐

LEGAL NAME:

POSITION OR PERCENT OF OWNERSHIP

TRADE OR OPERATING NAME:

ADDRESS:

BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:

PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:
Purpose of payments — Amount (actual dollars) $

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B LOBBYING: (Continued)

Person to Whom Services Rendered	Description of Legislation, Rules, Etc.	Compensation (Use Code)

C FOOD TRAVEL SEMINARS (continued)

Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount $	Value (Use Code)

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-24-020 Forms for amending statement of financial affairs. (1) The official form for amending statements of financial affairs as required by RCW 42.17A.700 for all persons who have previously filed the Form F-1 is designated Form "F-1A," revised ((~~1/12~~)) 1/15.

(2) No more than three F-1A forms may be filed to amend a previously submitted statement of financial affairs (Form F-1). The form can be used only to update information required on an F-1.

(3) The commission reserves the right to reject amendatory forms and require a new statement of financial affairs (Form F-1) at any time the amendments are confusing or create misunderstandings. Authority is delegated to the commission's executive director to make this determination.

(4) Copies of Form F-1A are available on the commission's web site, www.pdc.wa.gov and at the Commission Office, 711 Capitol Way, Room 206, Evergreen Plaza Building, P.O. Box 40908, Olympia, Washington 98504-0908. Any paper attachments must be on 8-1/2" x 11" white paper.

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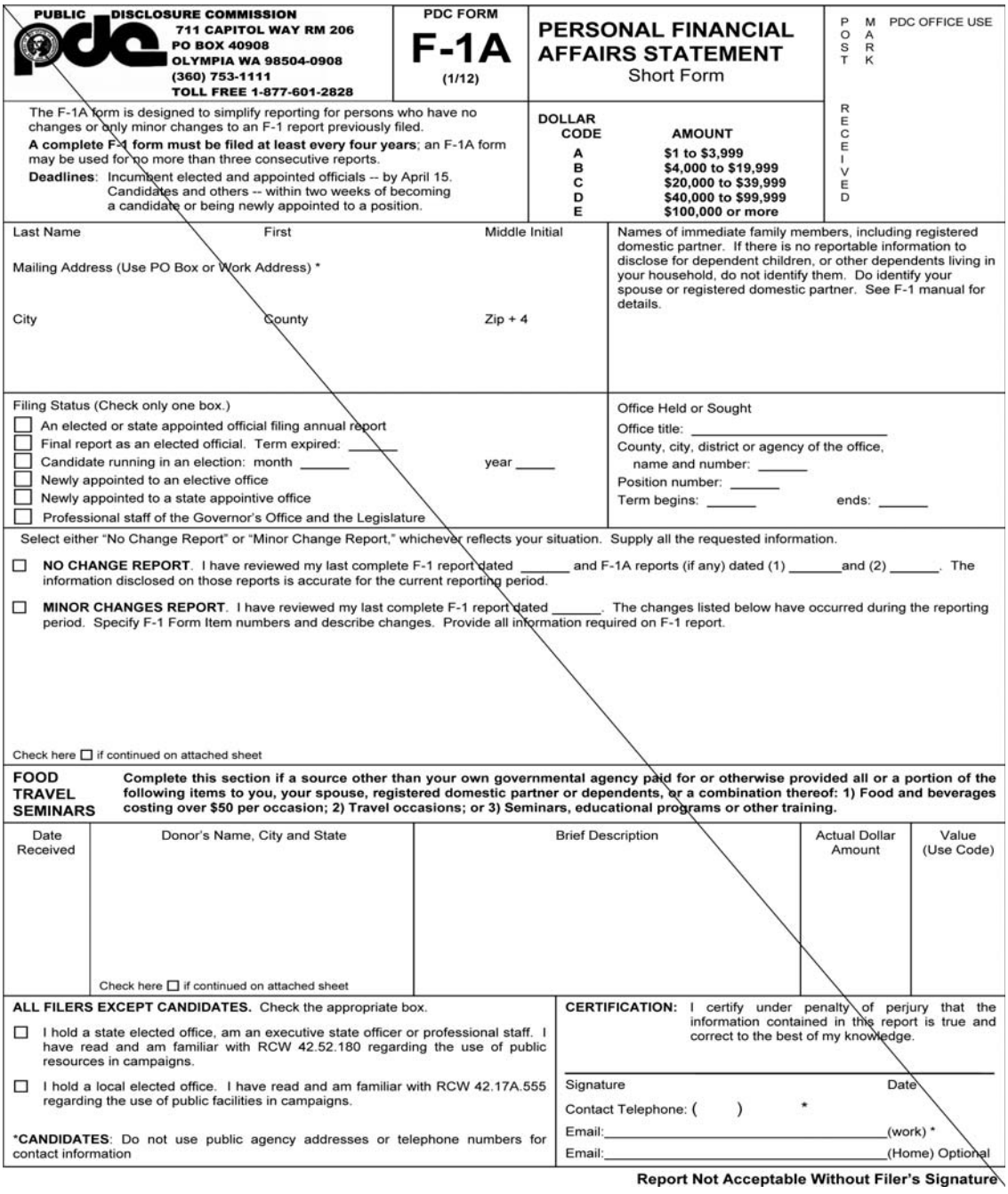

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PDC FORM F-1A (1/12)

PERSONAL FINANCIAL AFFAIRS STATEMENT
Short Form

POST MARK PDC OFFICE USE

RECEIVED

The F-1A form is designed to simplify reporting for persons who have no changes or only minor changes to an F-1 report previously filed.
A complete F-1 form must be filed at least every four years; an F-1A form may be used for no more than three consecutive reports.
Deadlines: Incumbent elected and appointed officials -- by April 15. Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position.

DOLLAR CODE	AMOUNT
A	$1 to $3,999
B	$4,000 to $19,999
C	$20,000 to $39,999
D	$40,000 to $99,999
E	$100,000 or more

Last Name First Middle Initial

Mailing Address (Use PO Box or Work Address) *

City County Zip + 4

Names of immediate family members, including registered domestic partner. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse or registered domestic partner. See F-1 manual for details.

Filing Status (Check only one box.)
- ☐ An elected or state appointed official filing annual report
- ☐ Final report as an elected official. Term expired: _____
- ☐ Candidate running in an election: month _____ year _____
- ☐ Newly appointed to an elective office
- ☐ Newly appointed to a state appointive office
- ☐ Professional staff of the Governor's Office and the Legislature

Office Held or Sought
Office title: _____
County, city, district or agency of the office, name and number: _____
Position number: _____
Term begins: _____ ends: _____

Select either "No Change Report" or "Minor Change Report," whichever reflects your situation. Supply all the requested information.

☐ **NO CHANGE REPORT**. I have reviewed my last complete F-1 report dated _____ and F-1A reports (if any) dated (1) _____and (2) _____. The information disclosed on those reports is accurate for the current reporting period.

☐ **MINOR CHANGES REPORT**. I have reviewed my last complete F-1 report dated _____. The changes listed below have occurred during the reporting period. Specify F-1 Form Item numbers and describe changes. Provide all information required on F-1 report.

Check here ☐ if continued on attached sheet

FOOD TRAVEL SEMINARS **Complete this section if a source other than your own governmental agency paid for or otherwise provided all or a portion of the following items to you, your spouse, registered domestic partner or dependents, or a combination thereof: 1) Food and beverages costing over $50 per occasion; 2) Travel occasions; or 3) Seminars, educational programs or other training.**

Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount	Value (Use Code)
	Check here ☐ if continued on attached sheet			

ALL FILERS EXCEPT CANDIDATES. Check the appropriate box.

☐ I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.

☐ I hold a local elected office. I have read and am familiar with RCW 42.17A.555 regarding the use of public facilities in campaigns.

***CANDIDATES**: Do not use public agency addresses or telephone numbers for contact information

CERTIFICATION: I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.

Signature Date

Contact Telephone: ( ) *

Email:_____(work) *

Email:_____(Home) Optional

Report Not Acceptable Without Filer's Signature

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PUBLIC DISCLOSURE COMMISSION
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TOLL FREE 1-877-601-2828

PDC FORM **F-1A** (1/15)

PERSONAL FINANCIAL AFFAIRS STATEMENT
Short Form

POST MARK — PDC OFFICE USE

RECEIVED

The F-1A form is designed to simplify reporting for persons who have no changes or only minor changes to an F-1 report previously filed.

A complete F-1 form must be filed at least every four years; an F-1A form may be used for no more than three consecutive reports.

Deadlines: Incumbent elected and appointed officials -- by April 15. Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position.

DOLLAR CODE	AMOUNT
A	$1 to $4,499
B	$4,500 to $23,999
C	$24,000 to $47,999
D	$48,000 to $119,999
E	$120,000 or more

Last Name First Middle Initial

Mailing Address (Use PO Box or Work Address) *

City County Zip + 4

Names of immediate family members, including registered domestic partner. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse or registered domestic partner. See F-1 manual for details.

Filing Status (Check only one box.)

- ☐ An elected or state appointed official filing annual report
- ☐ Final report as an elected official. Term expired: _____
- ☐ Candidate running in an election: month _____ year _____
- ☐ Newly appointed to an elective office
- ☐ Newly appointed to a state appointive office
- ☐ Professional staff of the Governor's Office and the Legislature

Office Held or Sought

Office title: _____

County, city, district or agency of the office, name and number: _____

Position number: _____

Term begins: _____ ends: _____

Select either "No Change Report" or "Minor Change Report," whichever reflects your situation. Supply all the requested information.

☐ **NO CHANGE REPORT**. I have reviewed my last complete F-1 report dated _____ and F-1A reports (if any) dated (1) _____and (2) _____. The information disclosed on those reports is accurate for the current reporting period.

☐ **MINOR CHANGES REPORT**. I have reviewed my last complete F-1 report dated _____. The changes listed below have occurred during the reporting period. Specify F-1 Form Item numbers and describe changes. Provide all information required on F-1 report.

Check here ☐ if continued on attached sheet

FOOD TRAVEL SEMINARS **Complete this section if a source other than your own governmental agency paid for or otherwise provided all or a portion of the following items to you, your spouse, registered domestic partner or dependents, or a combination thereof: 1) Food and beverages costing over $50 per occasion, excluding certain receptions as defined in WAC 390-20-020A, L-2 Reporting Guide; 2) Travel occasions; or 3) Seminars, educational programs or other training.**

Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount	Value (Use Code)
	Check here ☐ if continued on attached sheet			

ALL FILERS EXCEPT CANDIDATES. Check the appropriate box.

- ☐ I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.
- ☐ I hold a local elected office. I have read and am familiar with RCW 42.17A.555 regarding the use of public facilities in campaigns.

***CANDIDATES**: Do not use public agency addresses or telephone numbers for contact information

CERTIFICATION: I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.

Signature Date

Contact Telephone: ( ) *

Email:_____(work) *

Email:_____(Home) Optional

Report Not Acceptable Without Filer's Signature

((

Information Continued F-1A

Name

Select either "No Change Report" or "Minor Change Report," whichever reflects your situation. Supply all the requested information.

☐ **NO CHANGE REPORT**. I have reviewed my last complete F-1 report dated _____ and F-1A reports (if any) dated (1) _____and (2) _____. The information disclosed on those reports is accurate for the current reporting period.

☐ **MINOR CHANGES REPORT**. I have reviewed my last complete F-1 report dated _____. The changes listed below have occurred during the reporting period. Specify F-1 Form Item numbers and describe changes. Provide all information required on F-1 report.

FOOD TRAVEL SEMINARS (Continued)

Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount $	Value (Use Code)

))

Information Continued **F-1A**

Name

Select either "No Change Report" or "Minor Change Report," whichever reflects your situation. Supply all the requested information.

☐ **NO CHANGE REPORT**. I have reviewed my last complete F-1 report dated _____ and F-1A reports (if any) dated (1) _____and (2) _____. The information disclosed on those reports is accurate for the current reporting period.

☐ **MINOR CHANGES REPORT**. I have reviewed my last complete F-1 report dated _____. The changes listed below have occurred during the reporting period. Specify F-1 Form Item numbers and describe changes. Provide all information required on F-1 report.

FOOD TRAVEL SEMINARS (Continued)

Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount $	Value (Use Code)

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-24-202 Report of compensation from sales commissions. When a person receives compensation in the form of a commission on sales, the reporting of the compensation, required in RCW 42.17A.710, shall include:

(1) The name and address of the person or persons through whom a commission was paid;

(2) For purposes of RCW 42.17A.710 (1)(f), the name and address of each person (other than an individual) for whom a service was rendered or to whom a product was sold that resulted in a commission of $((~~2,000~~)) 2,400 or more in the aggregate;

(3) For purposes of RCW 42.17A.710 (1)(g)(i), the name and address of each governmental unit for whom a service

was rendered or to whom a product was sold that resulted in a commission;

(4) For purposes of RCW 42.17A.710 (1)(g)(ii), the name and address of each person (other than an individual) for whom a service was rendered or to whom a product was sold that resulted in a commission of $((~~10,000~~)) 12,000 or more in the aggregate.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-24-301 Changes in dollar amounts of reporting thresholds and code values. Pursuant to the commission's authority in RCW 42.17A.125(2) to revise the monetary reporting thresholds and code values found in chapter 42.17A RCW to reflect changes in economic conditions, the following revisions are made:

Statutory Section	Subject Matter	Amount Enacted or Last Revised	Revision Effective January ((~~1, 2008~~)) 12, 2015
.710 (1)(b)	Bank Accounts	$((~~15,000~~)) 20,000	$((~~20,000~~)) 24,000
.710 (1)(b)	Other Intangibles	$((~~1,500~~)) 2,000	$((~~2,000~~)) 2,400
.710 (1)(c)	Creditors	$((~~1,500~~)) 2,000	$((~~2,000~~)) 2,400
.710 (1)(f)	Compensation	$((~~1,500~~)) 2,000	$((~~2,000~~)) 2,400
.710 (1)(g)(ii)	Compensation to Business Entity	$((~~7,500~~)) 10,000	$((~~10,000~~)) 12,000
.710 (1)(g)	Bank Interest Paid	$((~~1,800~~)) 2,400	$((~~2,400~~)) 2,900
.710 (1)(h)	Real Property-Acquired	$((~~7,500~~)) 10,000	$((~~10,000~~)) 12,000
.710 (1)(i)	Real Property-Divested	$((~~7,500~~)) 10,000	$((~~10,000~~)) 12,000
.710 (1)(j)	Real Property-Held	$((~~7,500~~)) 10,000	$((~~10,000~~)) 12,000
.710 (1)(k)	Real Property-Business	$((~~15,000~~)) 20,000	$((~~20,000~~)) 24,000
.710 (1)(l)	Food and Beverages	$50	
.710 (2)	Dollar Code A	Up to $((~~2,999~~)) 3,999	Up to $((~~3,999~~)) 4,499
	Dollar Code B	$((~~3,000-$14,999~~)) 4,000-$19,999	$((~~4,000-$19,999~~)) 4,500-$23,999
	Dollar Code C	$((~~15,000-$29,999~~)) 20,000-$39,999	$((~~20,000-$39,999~~)) 24,000-$47,999
	Dollar Code D	$((~~30,000-$74,999~~)) 40,000-$99,999	$((~~40,000-$99,999~~)) 48,000-$119,999
	Dollar Code E	$((~~75,000~~)) 100,000 and up	$((~~100,000~~)) 120,000 and up

WSR 14-21-169
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION
[Filed October 22, 2014, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-22-050.

Title of Rule and Other Identifying Information: New WAC 390-24-150 Definition—Officer.

Hearing Location(s): 711 Capitol Way, Room 206, Olympia, WA 98504, on December 4, 2014, at 9:30 a.m.

Date of Intended Adoption: December 4, 2014.

Submit Written Comments to: Lori Anderson, (mail) P.O. Box 40908, Olympia, WA 98504-0908, (physical address) 711 Capitol Way, Room 206, Olympia, WA, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by November 26, 2014.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail jana.greer@pdc.wa.gov or phone (360) 753-1980.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Converts Interpretive Statement 91-01 to rule. New rule defines "officer" for the purpose of the personal financial affairs disclosure required of candidates, elected officials, and executive state officers.

Reasons Supporting Proposal: Over the past year, the commission has been working to convert long-standing interpretations to rules. Interpretation 01-01 has served as useful guidance for more than thirteen years. Converting it to rule better defines for the public the term "office" as it relates to candidates', elected officials', and executive state officers' personal financial disclosure requirements, specifically those who must disclose entities in which an "office" is held.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.710 (1)(n).

Statute Being Implemented: RCW 42.17A.710.

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: No increased costs to the agency are expected.

Name of Proponent: Public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; and Enforcement: Andrea Doyle, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.-135 and 34.05.320.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make the section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and, to date, the oint

[joint] administrative rules review committee has not made the section applicable to the adoption of these rules.

October 22, 2014
Lori Anderson
Communication and
Training Officer

NEW SECTION

WAC 390-24-150 Definition—Officer. (1) For the purposes of RCW 42.17A.710 (1)(g) and WAC 390-24-010, the term "officer" means and includes:

(a) President, vice-president, secretary, treasurer, or some derivation thereof;

(b) One who holds a corporate office; or

(c) An individual who holds a position described as an officer in a corporation's bylaws or who is appointed by the board of directors in accordance with the bylaws.

(2) An individual who has been given the title of "officer" to denote a managerial job classification is not an officer for the purposes of RCW 42.17A.710 (1)(g) and WAC 390-24-010.

WSR 14-21-173
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed October 22, 2014, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-119 on August 20, 2014.

Title of Rule and Other Identifying Information: This proposed rule making involves additional state sorting requirements for slope rockfish. The proposal includes amendments to WAC 220-44-050 and 220-69-230 to (1) clarify existing requirements and add new requirements regarding how certain fish species delivered into the state are reported on fish receiving tickets, and (2) update contact information for obtaining federal regulations incorporated by reference in state regulation for coastal bottomfish/groundfish.

Hearing Location(s): Washington Department of Fish and Wildlife (WDFW), Region 6, Small Conference Room, 48 Devonshire Road, Montesano, WA 98563, on November 25, 2014, at 10:00 a.m. to 12:00 noon.

Date of Intended Adoption: On or after November 25, 2014.

Submit Written Comments to: Corey Niles, Coastal Marine Policy Lead, WDFW, Region 6 Headquarters, 48 Devonshire Road, Montesano, WA 98563, e-mail Corey.Niles@dfw.wa.gov, fax (360) 249-1299, by November 18, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by November 18, 2014, TTY (800) 833-6388, or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Federal regulations for 2015 will require individual reporting of landings of Shortraker Rockfish (*Sebastes borealis*) and Rougheye Rockfish (*Sebastes aleutianus*)/Blackspotted Rockfish (*Sebastes melanostictus*). Fish buyers currently report landings of these species on fish receiving tickets under a "slope rockfish" market category that can also include a number of other species. WDFW proposes rule amendments to supplement the new federal requirement by requiring individual reporting of the remaining slope rockfish.

Reasons Supporting Proposal: WDFW samples a portion of landings of slope rockfish to tally the species specific composition of the market category using a statistical sampling design. These species specific proportions are applied to all landings into the slope rockfish category to produce estimates of landed catch by species for all fish reported on fish receiving tickets as slope rockfish. The three species to be newly sorted in 2015 by federal regulations make up a substantial portion of the slope rockfish landings into Washington. With their removal, the market category will include fewer and less frequently seen species and the current statistical sampling approach may become impractical or inefficient. Sorting by fishery participants and buyers is needed to produce accurate accounting of landings for the remaining slope rockfish species.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.04.090, 77.15.045 [77.12.045], and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.04.090, 77.15.045 [77.12.045], and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Corey Niles, 48 Devonshire Road, Montesano, WA 98563, (360) 902-2938; and Enforcement: Chief Steve Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Background and Description of the Requirements of the Proposed Rule: Commercial fishers bringing their catch into Washington must report their deliveries on a fish receiving ticket (WAC 220-69-215 and 220-69-241). This reporting duty also applies to individuals who first purchase or receive the delivery (WAC 220-69-240). Many commercial fish deliveries will include several species of fish that are identified on fish receiving tickets by species or by a market category that combines multiple species. For each species or market category, the primary information recorded on the receiving tickets includes the total weight of the fish (or number of fish for certain species) and the price paid by the purchaser.

For commercial deliveries of bottomfish (a.k.a. groundfish), the state requires the species and market categories reported on fish receiving tickets to be consistent with the Pacific Fishery Management Council's (PFMC) Pacific Coast Groundfish Fishery Management Plan and related regulations (WAC 220-69-230 [(2)](u) and 220-44-050). These

species and species groups derive from those that the PFMC uses when setting annual allowable catch levels ("harvest specifications"), creating management measures designed to keep catches within desired levels, or establishing sorting designations that are intended to aid in the tracking of landed catch.

This rule making focuses on one of the PFMC's current species categories, the slope rockfish market category/stock complex (*see #8 below*). The slope rockfish species group combines several species of the genus *Sebastes* that were originally grouped together because of their similarity of appearance and the assumption that they are likely to be caught together. In 2015, federal regulations will change to require the following three species currently landed into the slope rockfish market category to be sorted out: Rougheye Rockfish (*Sebastes aleutianus*), Blackspotted Rockfish (*Sebastes melanostictus*), and Shortraker Rockfish (*Sebastes borealis*). Rougheye rockfish and blackspotted rockfish are very closely related species and very difficult to tell apart visually. The federal regulations will therefore require the two to be landed and reported together in a rougheye/blackspotted species group. This new federal requirement will affect three main fishing vessel types: Bottom trawl, midwater trawl vessels targeting Pacific Whiting (*Merluccius productus*), and fixed gear "hook and line" vessels that primarily target Sablefish (*Anoplopoma fimbria*).

The PFMC recommended the pending federal regulations to improve confidence in the accuracy of landings data of the three species listed above into Washington, Oregon, and California. As part of this rule making, the department proposes additional sorting requirements - ranging from sorting all slope rockfish species to sorting one additional species - out of concern that the federal regulatory change will adversely impact the accuracy of the state's landings records for the remaining slope rockfish, or potentially render current methods for tracking landings inefficient.

The difficulty in differentiating the slope rockfish species is a major motivating factor in requiring landings be made into a market category instead of by species. Fish receiving tickets are self-reported, and for much of the groundfish fishery's history, they have not been verified on every landing. If species are difficult to distinguish from one another, then commercial fishers and buyers are more likely to misidentify and misreport landings, thereby reducing the accuracy of the data. Maintaining accurate data on fish landings is fundamental for several purposes, including the core assessments of a fishery's sustainability, collecting state revenues on fish landings, allocating allowable catches among fishery sectors or individuals, and various other conservation and management purposes.

To reduce inaccuracies caused by species misidentification, the department uses expert biologists to sample certain landings of slope rockfish using a statistical sampling design. These samples are then used to estimate species specific landings amounts for all landings into the slope rockfish market category. The estimates are specific to gear type and port of delivery and combine all samples collected over a three-month period (i.e. by quarter). In general, the department expects the sampling program will produce sufficiently accurate estimates if the samples taken represent the unsampled landings, and if the percentage of landings covered are adequate. Adequate coverage depends on the frequency and variability of landings. Accurate estimates for more rarely and infrequently landed species generally require higher coverage levels.

The department is evaluating how the removal of rougheye rockfish, shortraker rockfish, and blackspotted rockfish from the slope rockfish market category might affect sampling coverage levels. These three species make up a significant proportion of the slope rockfish landings into the state. The specific concerns with removing the three species from the market category include: (1) Potential negative impacts to the department's sampling program by requiring samplers to spend substantial time on quality control of the new sorting categories; and (2) that remaining slope rockfish may arrive in more sporadic and smaller volumes making it more difficult to obtain adequate sampling coverage. Moreover, the remaining volumes of slope rockfish may be small enough for commercial fishers and fish buyers to handle more efficiently than can be done with a sampling approach.

The department will be closely considering these issues of sampling efficiency together with the potential impacts to commercial fishers and fish buyers before moving forward with additional sorting requirements.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: The department does not anticipate the proposed requirements will increase the professional services needed by small businesses. Commercial fishing crews, fish buyers and other seafood processing workers must already identify and sort several species of rockfish and other groundfish. Existing fishing vessel crews and processing plant employees can learn to identify the various slope rockfish species with additional training. The pending new federal requirements for rougheye rockfish, blackspotted rockfish, and shortraker rockfish will already require such training.

Over seventy percent of slope rockfish landed into the state are made by vessels participating in the PFMC individual fishing quota program. Federal observers or catch monitors are present for deliveries of groundfish made under this program and would be available to help with species identification. The department's port samplers and other staff have helped fishing and processing operations with species identification training in the past and will continue to do so.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: Any increase in costs would come from the increased time it takes to handle and identify the additional species requiring sorting. The department's proposed sorting requirements would be unlikely to substantially increase the costs of compliance above what will be involved with the new federal sorting requirements. Rougheye rockfish, blackspotted rockfish, and shortraker rockfish are present in seventy-eight percent of hook and line landings of slope rockfish and thirty-three percent of trawl landings. When present, they make up seventy-eight percent of slope rockfish landings on average for hook and line gears and sixty-seven percent for trawl landings when present. This suggests that the new federal requirement will require

increased handling of what are now slope rockfish landings, especially for hook and line vessels.

No economic surveys on the costs associate with the sorting of rockfish species are available. In addition to the increased handling time, fishing crews and buying operations may have to alter their workspaces to handle and track the additional species and species categories. However, these impacts may occur regardless of whether the department adopts these proposed changes due to the pending federal regulatory changes. Additionally, the department anticipates increased costs from additional sorting requirements (whether federal or state) will be minimal in general as slope rockfish landings are a small percentage of the fish handled on a typical landing in terms of the total volume received. From 2011 to 2013, slope rockfish landings, on average, accounted for only 1.1 percent of bottom trawl landings, 0.2 percent of midwater trawl landings, and 4.7 percent of fixed gear (hook and line and pot) landings. The department encourages comment from affected fishing vessel and fish buying/processing operations on potential cost impacts and will strongly consider adverse effects to costs when deciding whether to implement the proposed requirements.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed requirements will not affect the marketability of slope rockfish, thus the department does not expect the changes to lead to any losses in sales or revenues. It is possible that fishing vessel operators may choose to land their slope rockfish into Oregon or California instead of Washington if the sorting requirements are viewed as too burdensome. If so, this would affect the revenues of Washington fish buyers. Likewise, more restrictive sorting requirements may affect the decisions of existing fish buyers to move to or new buyers to start up in another state. The department assumes that the additional costs associated with sorting are minor relative to the other costs and revenues associated with running or choosing to start seafood buying or processing businesses.

Again, without economic data available, the department strongly encourages feedback and comments from commercial fishers and fish buyers on how sales or revenues might be affected by these potential changes. As with costs, the department will strongly consider any adverse effects on sales or revenues in deciding whether to implement the proposed requirements.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;

2. Cost per hour of labor; or

3. Cost per one hundred dollars of sales.

As discussed above, the added costs of complying with the proposed changes over and above the cost of compliance with the new federal sorting requirements are difficult to identify but are not expected to be substantial. Since 2011, the top ten percent of businesses receiving slope rockfish consists of three fish processors. The average slope rockfish received by these buyers is seventeen metric tons per year over 2011 to 2013. This equates to an average of one percent of all commercial fish received by this business and roughly four percent of all groundfish species. The department therefore expects the proposed requirements to affect a small portion of the overall product flow of these businesses, especially considering that the pending federal sorting requirements will already cause these businesses to spend more time handling landings of rougheye rockfish and shortraker rockfish.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: The department has supported past implementations of new sorting requirements with education and outreach on how to correctly identify and sort species and will undertake them again for the new federal sorting requirements and the additional sorting requirements proposed here if implemented. This support should result in easier species identification and thereby reduce some costs to affected small businesses.

Since the impending federal regulatory changes will already increase sorting requirements, and the costs associated with the additional requirements contemplated in this proposal are marginal in addition to the new federal requirements, there are no other steps the agency could take to accomplish the potential rule changes at a reduced cost.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The PFMC is a public process in which the department actively participates and that allows for significant participation by small businesses and the public through written comment, participation on advisory bodies, and providing spoken testimony. The issue of slope rockfish sorting has been addressed at the PFMC multiple times over the past few years and the department has received some feedback through that process. For this rule making, the department will reach out to the affected business and consider all written and verbal comments (as required by chapter 34.05 RCW) before deciding to implement the requirements. Over the past three years, ninety-nine percent of the slope rockfish landings were received by ten businesses. This small number will facilitate the department in its efforts to work directly with the most affected business for their input.

8. A List of Industries That Will Be Required to Comply with the Rule: As highlighted above, the proposed requirements would affect commercial fishers delivering and initial purchasers or receivers of the slope rockfish species managed under the PFMC Pacific Coast Groundfish Fishery Management Plan and related regulations. These regulations currently define the following as slope rockfish:

Aurora Rockfish (*Sebastes aurora*)	Rougheye Rockfish (*Sebastes aleutianus*)
Bank Rockfish (*Sebastes rufus*)	Sharpchin Rockfish (*Sebastes zacentrus*)
Blackgill Rockfish (*Sebastes melanostomus*)	Shortraker Rockfish (*Sebastes borealis*)
Blackspotted Rockfish (*Sebastes melanostictus*)	Splitnose Rockfish (*Sebastes diploproa*)
Redbanded Rockfish (*Sebastes babcocki*)	Yellowmouth Rockfish (*Sebastes reedi*)

As mentioned above, the proposed change would be expected to affect three main fishing vessel types: Bottom trawl, midwater trawl vessels targeting Pacific whiting, and fixed gear "hook and line" vessels fishing primarily for sablefish. The commercial fishers and fish buyers delivering and receiving slope rockfish since 2011 operate mainly out of the Columbia River ports of Ilwaco, Chinook, Westport, Neah Bay, and Bellingham.

A copy of the statement may be obtained by contacting Corey Niles, Coastal Marine Policy Lead, WDFW, Region 6 Headquarters, 48 Devonshire Road, Montesano, WA 98563, phone (360) 249-1223, fax (360) 249-1299, e-mail Corey.Niles@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not involve hydraulics.

October 22, 2014
Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-23-002, filed 11/7/07, effective 12/8/07)

WAC 220-44-050 Coastal bottomfish catch limits. (1)(a) It is unlawful to possess, transport through the waters of the state, or land in any Washington state port, bottomfish taken in excess of the amounts or less than the minimum or maximum sizes, or in violation of any of the possession, landing, or sorting requirements published in the Code of Federal Regulations (C.F.R.), Title 50, Part 660, Subpart G. These federal regulations provide the requirements for commercial groundfish fishing in the Pacific Ocean. Additional regulations may be enacted and listed in the Federal Register, and these regulations override those in the C.F.R. if there are any inconsistencies between the two. Therefore, persons must consult these federal regulations, which chapter 220-44 WAC incorporates by reference and is based on, in part. Where rules refer to the fishery management area, that area is extended to include Washington state waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting ((~~Lori Preuss at 360-902-2930~~)) the west coast region of the National Marine Fisheries Service at 206-526-6140, or the internet at ((~~www.pcouncil.org~~)) www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html. State regulations may apply that are more restrictive than federal regulations.

(b) Landings of any Slope Rockfish species as defined in the Code of Federal Regulations (C.F.R.), Title 50, Part 660, Subpart G, must be reported at the species level except that Blackspotted Rockfish (*Sebastes melanostictus*) must be reported together with Rougheye Rockfish (*Sebastes aleutianus*) in a "Rougheye/Blackspotted" category.

(c) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(2)(a) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 59B, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) A violation of this section is a gross misdemeanor, punishable under RCW 77.15.550.

(3)(a) It is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed ten thousand pounds.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(4)(a) It is unlawful for an original receiver to receive whiting and whiting by-catch under the authority of an exempted fishing permit (EFP) issued by NMFS through the department, unless the original receiver has entered into a signed agreement with the department specifying the responsibilities of the original receiver in conjunction with the whiting EFP fishery. Failure to comply with the terms of the agreement shall be cause to remove the original receiver from the list of original receivers allowed to receive unsorted whiting catches from EFP vessels.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(5)(a) It is unlawful to land thresher shark taken by any means from state and offshore waters of the Pacific Ocean north of the Washington-Oregon boundary and south of the United States-Canada boundary. It is unlawful to land thresher shark taken south of the Washington-Oregon boundary unless each thresher shark landed is accompanied by a minimum of two swordfish.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(6)(a) It is unlawful to take salmon incidental to any lawful bottomfish fishery.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(7)(a) It is unlawful to retain sturgeon species, other than white sturgeon, taken incidental to any lawful bottomfish fishery. White sturgeon may be taken as long as the fisher complies with minimum and maximum size restrictions for commercial fisheries.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(8)(a) It is unlawful to retain any species of shellfish taken incidental to any lawful bottomfish fishery, except that it is lawful to retain octopus and squid.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

AMENDATORY SECTION (Amending WSR 14-02-013, filed 12/19/13, effective 1/19/14)

WAC 220-69-230 Description of Washington state nontreaty fish receiving tickets. (1) The department creates, prepares, prints, and distributes upon request the following nontreaty fish receiving ticket forms:

(a) Puget Sound salmon;

(b) Troll;

(c) Marine;

(d) Utility; and

(e) Shellfish.

(2) Fish receiving ticket forms must contain space for the following information:

(a) Fisherman: The name of the licensed deliverer.

(b) Address: The address of the licensed deliverer.

(c) Boat name: The name or Coast Guard number of the landing vessel.

(d) WDFW boat registration: The Washington department of fish and wildlife boat registration number.

(e) Gear: The code number or name of the specific type of gear used.

(f) Fisherman's signature: The signature of the licensed deliverer.

(g) Date: Date of landing.

(h) Dealer: Name of dealer and the department number assigned to dealer.

(i) Buyer: The name of buyer and the department number assigned to buyer.

(j) Receiver's signature: The signature of the original receiver.

(k) Number of days fished: Days spent catching fish.

(l) Fish or shellfish caught inside or outside 3-mile limit: Check one box.

(m) Catch area:

(i) The salmon catch area code if salmon are caught.

(ii) The marine fish/shellfish catch area code if marine fish are caught or shellfish are caught or harvested.

(n) Tally space for dealer's use: Used at the dealer's discretion.

(o) Species code: The department assigned species code.

(p) Individual number of salmon and sturgeon.

(q) Individual numbers of other fish species if fish other than salmon or sturgeon are landed as part of an incidental catch allowance or catch ratio restriction.

(r) The number of ghost shrimp in dozens, the number of oysters in dozens or gallons, and the species description for all fish and shellfish.

(s) The original total weight in round pounds of all shellfish or fish, except that pounds of legally dressed fish and shellfish may be recorded in original dressed weight so long as dressed fish and shellfish are designated as dressed on the fish receiving ticket.

(t) Value of fish and shellfish sold or purchased: Summary information for species, or species groups landed.

(u) All species or categories of bottomfish having ((~~a vessel trip limit~~)) federal or state harvest specifications, sorting requirements, or vessel trip limits must be listed separately (see WAC 220-44-050).

(v) Work area for dealer's use: Used at dealer's discretion, except:

(i) Federal sablefish endorsed limited entry permit numbers for each delivery of sablefish landed under the authority of the permit must be recorded on the fish receiving ticket in the space reserved for dealer's use. Separate fish tickets are required for each permit number used.

(ii) At the time of landing of coastal bottomfish into a Washington port, the fish buyer receiving the fish must clearly record all legally defined trawl gear aboard the vessel at the time of delivery of the bottomfish on the fish receiving ticket in the space reserved for dealer's use. The 3 trawl gear types are: Midwater trawl, roller trawl, and small foot rope trawl (foot rope less than 8 inches in diameter). The gear type(s) aboard the vessel must be recorded on the fish receiving ticket before the vessel representative signs the fish receiving ticket.

(w) Total amount: Total value of landing.

(x) Take-home fish: Species, number, and pounds of fish or shellfish retained for personal use.

(y) Crew: The name and signature of crew members who take home fish for personal use.

(3) A Puget Sound salmon fish receiving ticket must be completely, accurately, and legibly prepared for:

(a) Deliveries of nontreaty salmon caught in inland waters; and

(b) Any imports of fresh salmon into the state of Washington.

(4) A troll fish receiving ticket must be completely, accurately, and legibly prepared for:

(a) Deliveries of nontreaty coastal salmon and incidental catch;

(b) Any imports of fresh salmon into the state of Washington; and

(c) Any bottomfish or halibut subject to a catch allowance or ratio restriction, when those species are taken incidental to salmon fishing.

(5) A marine fish receiving ticket must be completely, accurately, and legibly prepared for:

(a) Nontreaty deliveries of marine fish or bottomfish that do not include salmon; and

(b) Any imports of fresh marine fish or bottomfish.

(6) A marine or utility fish receiving ticket must be completely, accurately, and legibly prepared for:

(a) Any nontreaty deliveries that do not include salmon, where other fish receiving tickets are not appropriate; and

(b) Any imports of fresh fish or shellfish that do not include salmon.

(7) A shellfish receiving ticket must be completely, accurately, and legibly prepared for:

(a) Any nontreaty deliveries of shellfish;

(b) Any imports of fresh shellfish; and

(c) Any incidental catch of bottomfish made while fishing for shellfish. The species name, total pounds, and price per pounds must be entered for each species of bottomfish caught.

WSR 14-21-174
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed October 22, 2014, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-10-062.

Title of Rule and Other Identifying Information: WAC 390-20-020 Forms for lobbyist report of expenditures and 390-20-020A L-2 reporting guide for entertainment, receptions, travel and educational expenditures.

Hearing Location(s): 711 Capitol Way, Room 206, Olympia, WA 98504, on December 4, 2014, at 9:30 a.m.

Date of Intended Adoption: December 4, 2014.

Submit Written Comments to: Lori Anderson, (mail) P.O. Box 40908, Olympia, WA 98504-0908, (physical address) 711 Capitol Way, Room 206, Olympia, WA, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112 by November 26, 2014.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail jana.greer@pdc.wa.gov or phone (360) 753-1980.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Interpretive Statement 96-03, L-2 Reporting Guide for Entertainment, Travel and Educational Expenditures is being converted to rule. Related instructions pertaining to disclosing costs of certain legislative receptions are being inserted on PDC Form L-2. Additionally, the instructions contained in PDC Forms F-1 and F-1 [F-1A] are similarly updated under separate notice published in Washington State Register Issue 14-21.*

* Under separate notice, a December 4, 2014, hearing is scheduled to consider amendments to WAC 390-20-010 and 390-20-020 to adjust for inflation, the dollar amounts used for candidates', elected officials', and executive state officers' personal financial affairs disclosure (PDC Forms F-1 and F-1A) pursuant to RCW 42.17A.700 - [42.17A].710. These forms are also used to disclose gifts of food and beverage in excess of $50, as required by RCW 42.52.150(5). Proposed amendments to WAC 390-20-010 and 390-20-020 will insert instructions on the F-1 and F-1A forms explaining that disclosing the cost of food and beverage served at a qualifying legislative reception is not required.

Proposed new WAC 390-20-020A explains how typical lobbying expenditures for gifts, entertainment, travel, and educational expenses are disclosed on lobbyists' monthly reports and whether notice needs to be provided to the recipient. The proposed new rule differs from the interpretation in that it allows an alternative method for disclosing legislative receptions. The change relieves lobbyists from disclosing the per person cost of legislative receptions, provided that the entire legislature, all members of a chamber, or any of the two largest caucuses recognized in each chamber are invited and the reception is sponsored by a person other than a lobbyist; attended by individuals other than legislators, lobbyists, and lobbyist employers; is a social event; and does not include a sit-down meal. Proposed amendment to WAC 390-20-020 inserts instructions on the monthly lobbyist expenditure report (PDC Form L-2) explaining that disclosing the per-person cost for legislative receptions as defined in (proposed) WAC 390-20-020A is not required.

Reasons Supporting Proposal: The interpretation has served as useful guidance for many years. Converting it to rule better informs the public of lobbyist disclosure requirements. Reception costs are currently disclosed in the same manner as entertainment, which requires disclosing a per person cost. Stakeholders have encouraged the commission to develop an alternative disclosure method for receptions, stating that organizers have difficulty monitoring what food and beverage attendees consume. The commission has recently determined that receptions are not entertainment, but rather an opportunity for legislators to meet with constituents, an obligation or customary duty of holding office. Furthermore, the proposed amendments conform to the disclosure requirements set out in the Ethics Act at RCW 42.52.150. Finally, the commission believes the proposal will promote compliance and consistent reporting without depriving the public of significant data.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.615(4).

Statute Being Implemented: RCW 42.17A.615.

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

Name of Proponent: Public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; and Enforcement: Andrea Doyle, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.135 and 34.05.320.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make the section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and, to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

October 22, 2014
Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 14-15-015, filed 7/3/14, effective 12/1/14)

WAC 390-20-020 Forms for lobbyist report of expenditures. The official form for the lobbyist report of expenditures is designated "L-2," revised ((~~12/14~~)) 1/15 which includes the L-2 Memo Report, dated ((~~1/02~~)) 1/15. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504. Any attachments shall be on 8-1/2" x 11" white paper.

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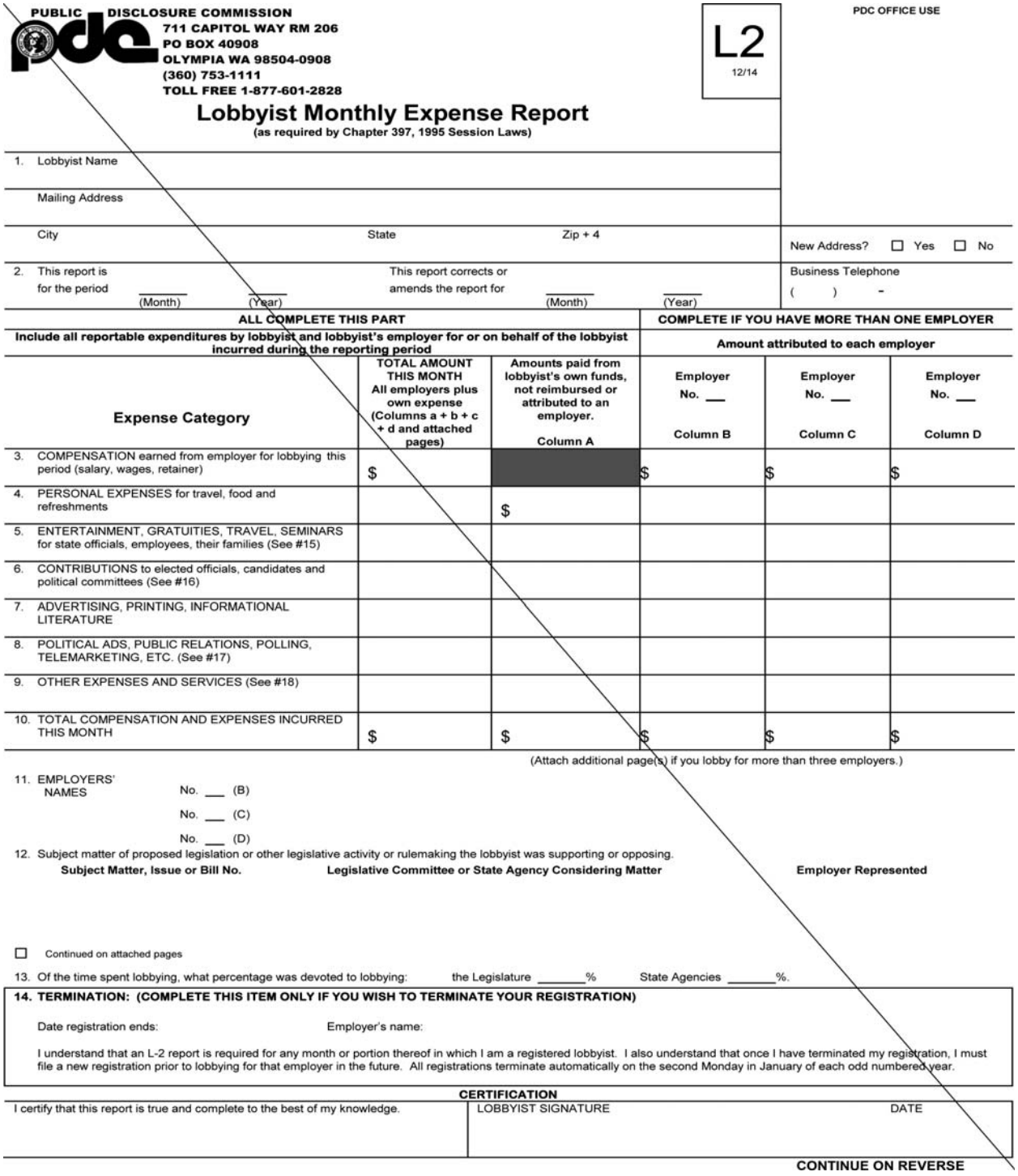

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

L2
12/14

PDC OFFICE USE

Lobbyist Monthly Expense Report
(as required by Chapter 397, 1995 Session Laws)

1. Lobbyist Name

Mailing Address

City State Zip + 4

New Address? ☐ Yes ☐ No

2. This report is for the period (Month) (Year)

This report corrects or amends the report for (Month) (Year)

Business Telephone ( ) -

ALL COMPLETE THIS PART Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period			COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER Amount attributed to each employer		
Expense Category	TOTAL AMOUNT THIS MONTH All employers plus own expense (Columns a + b + c + d and attached pages)	Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A	Employer No. ___ Column B	Employer No. ___ Column C	Employer No. ___ Column D
3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer)	$		$	$	$
4. PERSONAL EXPENSES for travel, food and refreshments		$			
5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15)					
6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16)					
7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE					
8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17)					
9. OTHER EXPENSES AND SERVICES (See #18)					
10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH	$	$	$	$	$

(Attach additional page(s) if you lobby for more than three employers.)

11. EMPLOYERS' NAMES No. ___ (B)
No. ___ (C)
No. ___ (D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

Subject Matter, Issue or Bill No.	Legislative Committee or State Agency Considering Matter	Employer Represented

☐ Continued on attached pages

13. Of the time spent lobbying, what percentage was devoted to lobbying: the Legislature _____% State Agencies _____%.

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: Employer's name:

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.	LOBBYIST SIGNATURE	DATE

CONTINUE ON REVERSE

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
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OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

L2
1/15

PDC OFFICE USE

Lobbyist Monthly Expense Report

(as required by Chapter 397, 1995 Session Laws)

1. Lobbyist Name

Mailing Address

City State Zip + 4

New Address? ☐ Yes ☐ No

2. This report is for the period _____ (Month) _____ (Year)

This report corrects or amends the report for _____ (Month) _____ (Year)

Business Telephone ( ) -

ALL COMPLETE THIS PART

Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period

COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER

Amount attributed to each employer

Expense Category	TOTAL AMOUNT THIS MONTH All employers plus own expense (Columns a + b + c + d and attached pages)	Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A	Employer No. ___ Column B	Employer No. ___ Column C	Employer No. ___ Column D
3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer)	$		$	$	$
4. PERSONAL EXPENSES for travel, food and refreshments		$			
5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15)					
6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16)					
7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE					
8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17)					
9. OTHER EXPENSES AND SERVICES (See #18)					
10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH	$	$	$	$	$

(Attach additional page(s) if you lobby for more than three employers.)

11. EMPLOYERS' NAMES No. ___ (B)
No. ___ (C)
No. ___ (D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

Subject Matter, Issue or Bill No.	Legislative Committee or State Agency Considering Matter	Employer Represented

☐ Continued on attached pages

13. Of the time spent lobbying, what percentage was devoted to lobbying: the Legislature _____% State Agencies _____%.

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: Employer's name:

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CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.	LOBBYIST SIGNATURE	DATE

CONTINUE ON REVERSE

((

Page 2 **L2**

Lobbyist Name

Reporting Period _____ (Month) _____ (Year)

15. Itemize all of the following expenditures that were incurred by lobbyist or lobbyist employer(s) for legislators, state officials, state employees and members of their immediate families. **In the total amount column, show the total amount spent for each occasion including any staging costs, tax, and gratuity. Also show the actual amount spent entertaining each individual, as shown in the example. When reporting a reception or similar event, show the amount fairly attributed to each individual.**
- Entertainment expenditures exceeding $50 per occasion (including lobbyist's expense) for meals, beverages, tickets, passes, or for other forms of entertainment.
- Travel, lodging and subsistence expenses in connection with a speech, presentation, appearance, trade mission, seminar or educational program.
- Enrollment and course fees in connection with a seminar or educational program.

Lobbyists must provide an elected official with a copy of the L-2 or Memo Report if the lobbyist reports: 1) spending on one occasion over $50 for food or beverages for the official and/or his or her family member(s); or 2) providing travel, lodging, subsistence expenses or enrollment or course fees for the official and, if permitted, the official's family.

Date	Names of all Persons Entertained or Provided Travel, etc. Include actual amounts spent for entertainment	Description, Place, etc.	Sponsoring Employer	Total Amount
mm/dd/year	*Example: Sen Bow ($32), Rep Arrow ($28), and J. D. Lobbyist ($36) tax & gratuity ($25.41)*	*Dinner at Anthony's, Olympia*	*XYZ Corporation*	*$121.41*
				$
N/A	Total expenses itemized on attached Memo Reports →			

☐ Continued on attached pages.

16. If a monetary or in-kind contribution exceeding $25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below or on a Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding $25 was given to the following, itemize the contribution below: a caucus political committee; a political party; or a grass roots lobbying campaign.

Date	Name of Individual or Committee Receiving Contribution	Source of Contribution	Amount
			$
N/A	Total contributions itemized on attached Memo Reports →		

If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be again included in this L-2 report.)

☐ Continued on attached pages. PAC Name: _____

17. Expenditures for: a) political advertising supporting or opposing a state or local candidate or ballot measure; or b) public relations, telemarketing, polling or similar activities that directly or indirectly are lobbying-related must be itemized by amount, vendor or person receiving payment, and a brief description of the activity. Itemize each expenditure on an attached page that also shows lobbyist name and report date. Put the aggregate total of these expenditures on line 8.

18. Payments by the lobbyist for other lobbying expenses and services, including payments to subcontract lobbyists, expert witnesses and others retained to provide lobbying services or assistance in lobbying and payments for grass roots lobbying campaigns (except advertising/printing costs listed in Item 7).

Date	Recipient's Name and Address	Employer for Whom Expense was Incurred	Amount
			$

☐ Continued on attached page.

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Page 2 L2

Lobbyist Name

Reporting Period _____ (Month) _____ (Year)

15. Itemize all of the following expenditures that were incurred by lobbyist or lobbyist employer(s) for legislators, state officials, state employees and members of their immediate families. **In the total amount column, show the total amount spent for each occasion including any staging costs, tax, and gratuity. Also show the actual amount spent entertaining each individual, as shown in the example.**
- Entertainment expenditures exceeding $50 per occasion (including lobbyist's expense) for meals, beverages, tickets, passes, or for other forms of entertainment.
- Receptions. See WAC 390-20-020A, L-2 Reporting Guide, to determine if per person cost is required.
- Travel, lodging and subsistence expenses in connection with a speech, presentation, appearance, trade mission, seminar or educational program.
- Enrollment and course fees in connection with a seminar or educational program.

Lobbyists must provide an elected official with a copy of the L-2 or Memo Report if the lobbyist reports: 1) spending on one occasion over $50 for food or beverages for the official and/or his or her family member(s); or 2) providing travel, lodging, subsistence expenses or enrollment or course fees for the official and, if permitted, the official's family.

Date	Names of all Persons Entertained or Provided Travel, etc. Include actual amounts spent for entertainment	Description, Place, etc.	Sponsoring Employer	Total Amount
mm/dd/year	*Example: Sen Bow ($32), Rep Arrow ($28), and J. D. Lobbyist ($36) tax & gratuity ($25.41)*	*Dinner at Anthony's, Olympia*	*XYZ Corporation*	*$121.41*
				$
N/A	Total expenses itemized on attached Memo Reports →			

☐ Continued on attached pages.

16. If a monetary or in-kind contribution exceeding $25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below or on a Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding $25 was given to the following, itemize the contribution below: a caucus political committee; a political party; or a grass roots lobbying campaign.

Date	Name of Individual or Committee Receiving Contribution	Source of Contribution	Amount
			$
N/A	Total contributions itemized on attached Memo Reports →		

If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be again included in this L-2 report.)

☐ Continued on attached pages. PAC Name: _____

17. Expenditures for: a) political advertising supporting or opposing a state or local candidate or ballot measure; or b) public relations, telemarketing, polling or similar activities that directly or indirectly are lobbying-related must be itemized by amount, vendor or person receiving payment, and a brief description of the activity. Itemize each expenditure on an attached page that also shows lobbyist name and report date. Put the aggregate total of these expenditures on line 8.

18. Payments by the lobbyist for other lobbying expenses and services, including payments to subcontract lobbyists, expert witnesses and others retained to provide lobbying services or assistance in lobbying and payments for grass roots lobbying campaigns (except advertising/printing costs listed in Item 7).

Date	Recipient's Name and Address	Employer for Whom Expense was Incurred	Amount
			$

☐ Continued on attached page.

INFORMATION CONTINUED

L2

(Use this page if you need additional space for Items 12, 15 or 16)

Lobbyist Name

Reporting Period _____ (Month) _____ (Year)

12.	Subject Matter, Issue or Bill No.	Legislative Committee or State Agency Considering Matter	Employer Represented

15. Date	Names of all Persons Entertained or Provided Travel, etc.	Description, Place, etc.	Sponsoring Employer	Amount
				$

16. Date	Name of Individual or Committee Receiving Contribution	Source of Contribution	Amount
			$

INFORMATION CONTINUED

L2

(Use this page if you need additional space for Items 17 or 18)

Lobbyist Name

Reporting Period _____ (Month) _____ (Year)

17. Date	Names of Vendor or Person Receiving Payment	Description, Place, etc.	Sponsoring Employer	Amount
				$

18. Date	Recipient's Name and Address	Employer for Whom Expense was Incurred	Amount
			$

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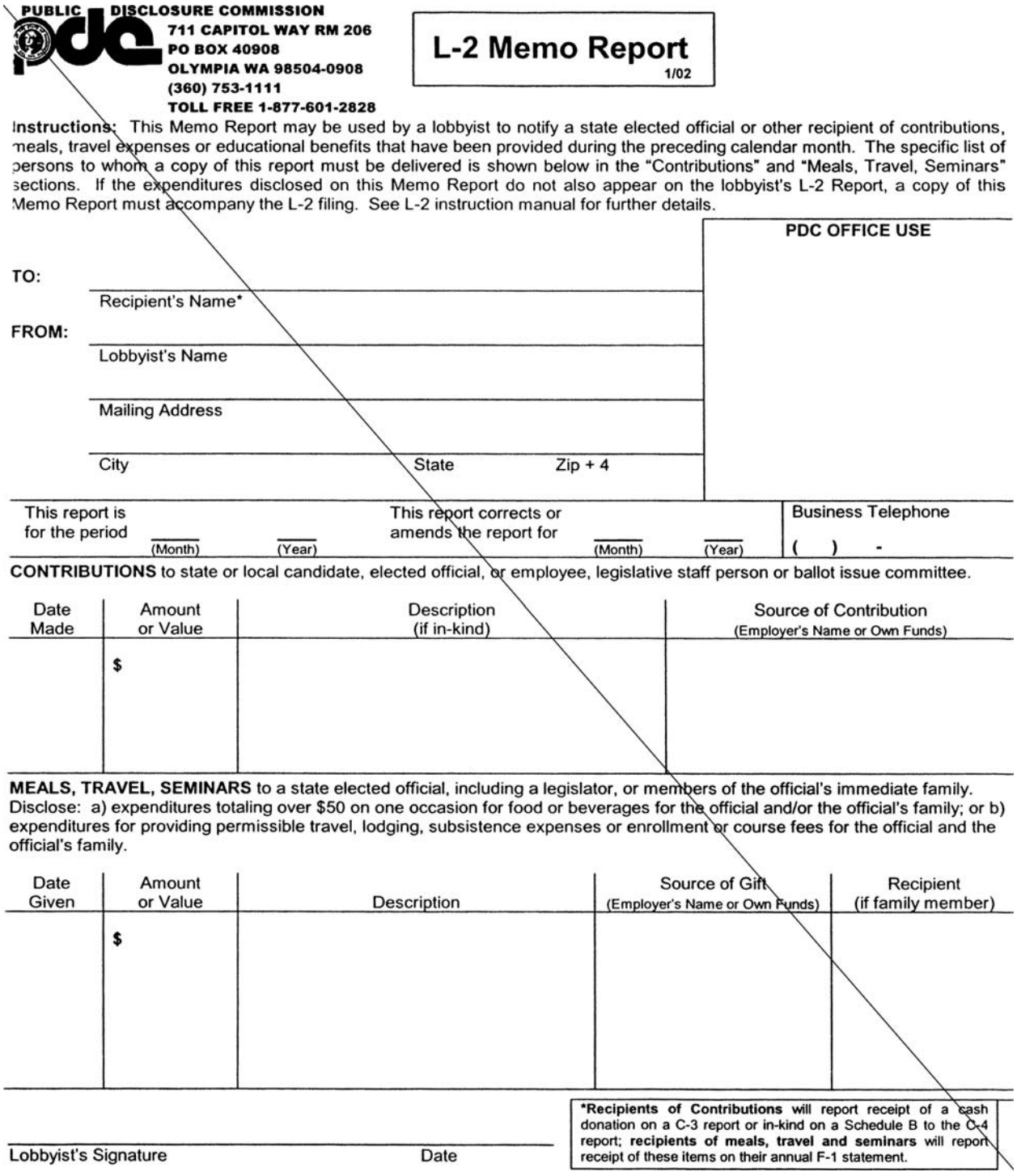

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

L-2 Memo Report

1/02

Instructions: This Memo Report may be used by a lobbyist to notify a state elected official or other recipient of contributions, meals, travel expenses or educational benefits that have been provided during the preceding calendar month. The specific list of persons to whom a copy of this report must be delivered is shown below in the "Contributions" and "Meals, Travel, Seminars" sections. If the expenditures disclosed on this Memo Report do not also appear on the lobbyist's L-2 Report, a copy of this Memo Report must accompany the L-2 filing. See L-2 instruction manual for further details.

PDC OFFICE USE

TO: Recipient's Name*

FROM: Lobbyist's Name

Mailing Address

City State Zip + 4

This report is for the period (Month) (Year)

This report corrects or amends the report for (Month) (Year)

Business Telephone ( ) -

CONTRIBUTIONS to state or local candidate, elected official, or employee, legislative staff person or ballot issue committee.

Date Made	Amount or Value	Description (if in-kind)	Source of Contribution (Employer's Name or Own Funds)
	$		

MEALS, TRAVEL, SEMINARS to a state elected official, including a legislator, or members of the official's immediate family. Disclose: a) expenditures totaling over $50 on one occasion for food or beverages for the official and/or the official's family; or b) expenditures for providing permissible travel, lodging, subsistence expenses or enrollment or course fees for the official and the official's family.

Date Given	Amount or Value	Description	Source of Gift (Employer's Name or Own Funds)	Recipient (if family member)
	$			

Lobbyist's Signature Date

*Recipients of Contributions will report receipt of a cash donation on a C-3 report or in-kind on a Schedule B to the C-4 report; recipients of meals, travel and seminars will report receipt of these items on their annual F-1 statement.

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

L-2 Memo Report

1/15

Instructions: This Memo Report may be used by a lobbyist to notify a state elected official or other recipient of contributions, meals, travel expenses or educational benefits that have been provided during the preceding calendar month. The specific list of persons to whom a copy of this report must be delivered is shown below in the "Contributions" and "Meals, Travel, Seminars" sections. If the expenditures disclosed on this Memo Report do not also appear on the lobbyist's L-2 Report, a copy of this Memo Report must accompany the L-2 filing. See L-2 instruction manual for further details.

PDC OFFICE USE

TO: Recipient's Name*

FROM: Lobbyist's Name

Mailing Address

City State Zip + 4

This report is for the period (Month) (Year)

This report corrects or amends the report for (Month) (Year)

Business Telephone ( ) -

CONTRIBUTIONS to state or local candidate, elected official, or employee, legislative staff person or ballot issue committee.

Date Made	Amount or Value	Description (if in-kind)	Source of Contribution (Employer's Name or Own Funds)
	$		

MEALS, TRAVEL, SEMINARS to a state elected official, including a legislator, or members of the official's immediate family. Disclose: a) expenditures totaling over $50 on one occasion for food or beverages for the official and/or the official's family, excluding certain receptions as defined in WAC 390-20-020A, L-2 Reporting Guide; or b) expenditures for providing permissible travel, lodging, subsistence expenses or enrollment or course fees for the official and the official's family.

Date Given	Amount or Value	Description	Source of Gift (Employer's Name or Own Funds)	Recipient (if family member)
	$			

Lobbyist's Signature Date

***Recipients of Contributions** will report receipt of a cash donation on a C-3 report or in-kind on a Schedule B to the C-4 report; **recipients of meals, travel and seminars** will report receipt of these items on their annual F-1 statement.

NEW SECTION

WAC 390-20-020A L-2 Reporting guide.

For Entertainment, Receptions, Travel and Educational Expenditures

Typical Expenditures* (Only permitted if receipt could not reasonably be expected to influence the performance of the officer's or employee's official duties.)	**Expense Included on Line 5**	**Expense Included on Line 15**	**Give Copy of L-2 or Memo Report to Elected Official**
Entertaining State Officials, Employees or Their Families:			
□ Any type of entertainment occasion costing $50 or less	Yes	No	No
□ Breakfast, lunch or dinner for legislator or other state official or employee (singly, or in conjunction with family member(s)) and total cost for occasion is:			
º $50 or less	Yes	No	No
º More than $50, and amount attributable to legislator/family is more than $50	Yes	Yes	Yes
□ Tickets to theater, sporting events, etc., costing $50 or less	Yes	Yes	No
□ Golf outing at which no more than $50 was spent on each official, including any member(s) of the official's family	Yes	Yes	No
Receptions:			
□ Reception to which the entire legislature, all members of a chamber, or any of the two largest caucuses recognized in each chamber are invited and is: º Sponsored by a person other than a lobbyist; º Attended by individuals other than legislators, lobbyists, and lobbyist employers; º A social event; and º Does not include a sit-down meal.	Yes	Yes, except that a per-person cost is not required	No
□ All other receptions	Yes	Yes	Yes, if the food and beverage cost for the legislator and family members exceeds $50
Travel-Related Expenditures for Officials, Employees:			
□ Travel, lodging, meals for office-related appearance or speech at lobbyist employer's annual conference	Yes	Yes	Yes
□ Travel, lodging, meals for office-related tour of lobbyist employer's manufacturing plant or other facility	Yes	Yes	Yes
Educational Expenditures for Officials, Employees:			
□ Travel, lodging, meals, tuition to attend seminar sponsored by nonprofit organization	Yes	Yes	Yes
Other Lobbying-Related Items:			
□ Flowers costing any amount to officials, staff and/or family	Yes	No	No
□ Candy costing $50 or less per official or employee	Yes	No	No
□ Golf balls, coffee cups or other promotional items	Yes	No	No
□ Fruit baskets costing $50 or less per official or employee	Yes	No	No

Note: References to employees or staff do not constitute authority to provide impermissible items to regulatory, contracting or purchasing employees.

WSR 14-21-175
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed October 22, 2014, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-18-089.

Title of Rule and Other Identifying Information: Chapter 16-324 WAC, Certification of seed potatoes, the agency is proposing to amend the certification requirements for seed potatoes by:

(1) Repealing the requirement for laboratory testing of lots entered in the postharvest testing for potato virus Y (PVY);

(2) Clarifying the definition of seed potato farm;

(3) Requiring a certificate of compliance for evidence of eligibility for the transfer of seed lots between seed potato farms;

(4) Authorizing the department to permit seed growers to plant lots in which the eligibility hasn't been determined under certain conditions; and

(5) Including the bacterium *Candidatus liberibacter* with the tolerance for phytoplasmas.

This proposal is the result of petitions submitted by the Washington seed potato commission and the Washington potato commission.

Hearing Location(s): Washington State University, Whatcom County Extension, 1000 North Forest Street, Suite 201, Small Conference Room, Bellingham, WA 98225, on November 25, 2014, at 11:00 a.m.

Date of Intended Adoption: December 9, 2014.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by November 25, 2014.

Assistance for Persons with Disabilities: Contact Henri Gonzales by November 18, 2014, TTY (800) 833-6388, or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This chapter establishes standards for seed potato certification. The proposed amendment repeals the requirement for laboratory testing of seed potato lots entered in the postharvest test. The proposal also clarifies the definition of "seed potato farm," defines the documentation needed when transferring seed potatoes to another seed farm within the state, and adds the bacterial pathogen *Candidatus liberibacter* to the phytoplasma tolerance. The current rule requires all generation 1 (G1) lots over 1/4 acre and all lots sold to other seed potato farms to be postharvest tested. The postharvest test also includes a laboratory test for PVY. Although the postharvest test results don't affect the status of certification, they do affect the eligibility for recertification. This proposal will repeal the laboratory test component of the postharvest test and reduce costs to program participants. A more precise definition of seed potato farm and specifying documentation to confirm eligibility of seed potato lots purchased from other growers within the state will increase transparency of the program without additional costs to the growers. Adding a permit section to the rule will protect the growers from unforeseen problems such as unusual weather that could delay planting.

Reasons Supporting Proposal: Seed potato certification is an effective means of controlling systemic diseases/pests such as virus diseases in commercial potato crops. As a vegetatively propagated annual crop, potatoes tend to accumulate viruses that eventually affect production and quality. Washington commercial potato growers rely on certified seed to minimize the effects of these pests. Growers want to eliminate redundancy in the postharvest test, clarify eligibility, and add a new emerging pest to the tolerances for field inspections.

Statutory Authority for Adoption: RCW 15.14.015 and chapter 34.05 RCW.

Statute Being Implemented: RCW 15.14.015.

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

Name of Proponent: Washington seed potato commission and the Washington potato commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tom Wessels, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal imposes no additional regulations or costs on Washington businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

October 22, 2014
Brad White
Assistant Director

AMENDATORY SECTION (Amending WSR 13-12-014, filed 5/24/13, effective 6/24/13)

WAC 16-324-361 Definitions. "Certification" means that the lot of seed potatoes was inspected and meets the requirements of this chapter.

"Cull" means any lot of potatoes rejected for certification for any reason.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of the department of agriculture or his/her duly appointed representative.

"Disease tested" means tested for and found free of all of the following diseases: Potato virus A (PVA), potato virus M (PVM), potato virus S (PVS), potato virus X (PVX), potato virus Y (PVY), potato leafroll virus (PLRV), potato mop top virus (PMTV), potato spindle tuber viroid (spindle tuber), *Erwinia carotovora* ssp. *carotovora* (soft rot), *Erwinia carotovora* ssp. *atroseptica* (black leg) and *Clavibacter michiganense* spp. *sepedonicus* (ring rot).

"ELISA testing" means laboratory testing by enzyme-linked immunosorbant assay or other equivalent methodologies.

"Micropropagated" means potato stock propagated using aseptic laboratory techniques and culture media to promote plant tissue growth.

"Microtubers" means tubers produced in vitro by a micropropagated plant or plantlet.

"Minitubers" means tubers produced under controlled greenhouse conditions.

"Nematode" means plant parasitic nematodes capable of infesting potatoes, including but not limited to the genus *Meloidogyne*.

"Nuclear stock" means plantlets, microtubers, minitubers, or seed potatoes produced from prenuclear stock, and grown in the field for the first time.

"Plot" means a seed potato planting that is 0.25 acre or less in size.

"Powdery scab" means the disease caused by the fungus *Spongospora subterranea*.

"Prenuclear" means micropropagated plants or tubers and plants or minitubers produced in a greenhouse.

"Quarantine pest" means a pest of potential economic importance and not yet present in the state, or present but not widely distributed and being officially controlled.

"Recertification" means the process of certifying a seed lot that was certified the previous year.

"Rogue" means removing diseased or undesirable plants, including all associated plant parts, from a seed potato field.

"Seed lot" means a field, in whole or in part, or a group of fields producing seed potatoes, or the potato tubers harvested from a seed potato field.

"Seed potato farm" means a separate seed potato enterprise, including all land, equipment, storages and all facilities used to produce only certified seed potatoes.

"Seed potatoes" means vegetatively propagated tubers used for potato production.

"Seed source" means seed potatoes produced by an individual ((~~grower~~)) seed potato farm within a particular seed production area.

"Trace" means a barely perceivable indication of plant disease that amounts to less than 0.001 percent of sample.

"Tolerance" means the maximum acceptable percentage of potato plants or tubers that is diseased, infected by plant pests, defective or off-type based on visual inspection or laboratory testing by the director or other authorized person.

"Unit method" means a method of planting in which cut seed pieces from one tuber are dropped consecutively in a row, or in which all tubers from one plant are dropped consecutively in a row.

AMENDATORY SECTION (Amending WSR 04-12-026, filed 5/26/04, effective 6/26/04)

WAC 16-324-375 Application and withdrawal. (1) To apply for certification, applicants must use the form provided by the department and furnish all information requested, including the date, name, signature and address of the applicant, lot number, seed source identification number, variety, class planted, acres, date planted, seed spacing at planting, average length of rows, year the field was last cropped to potatoes, along with their variety and lot number, and a map of the field location. Applications for certification must reach the department on or before June 15 of each year, accompanied by the appropriate fee, field location maps and evidence of eligibility such as tags or certificates. A North American Certified Seed Potato Health Certificate is required for evidence of eligibility for seed lots originating in other states or Canada, and must be submitted with the application. A certificate of compliance is required for evidence of eligibility and must be submitted with the application for seed lots originating in Washington state except when planted back on the same seed potato farm. Unless prior approval has been granted, late applications will be assessed a late fee of twenty dollars per application. The department will not accept applications after July 10.

(2) Separate applications are required for each variety, seed source, and seed lot except as described in subsection (5) of this section.

(3) Separate applications are required for each field location that is separated by more than one hundred feet.

(4) Growers may withdraw a seed potato lot from certification for any reason by notifying the department in writing.

(5) Growers may use a single application for multiple varieties planted in a field plot totaling 1/8 acre or less. The application must contain the information required in subsection (1) of this section for each variety. Growers shall use one identification number for the field plot with a separate letter designation for each variety in the field plot.

AMENDATORY SECTION (Amending WSR 13-12-014, filed 5/24/13, effective 6/24/13)

WAC 16-324-391 Eligibility requirements. (1) Only seed potatoes derived from plants that have been disease tested and certified by an official certification agency are eligible for certification.

(2) Only seed lots that meet or exceed the minimum requirements as established in this chapter are eligible for certification. A seed lot that has more than a trace amount of virus disease noted during any field inspection is not eligible for recertification, unless it has been post-harvest tested and meets the minimum standards established in WAC 16-324-420.

(3) A post-harvest test is required for seed lots that will be recertified, except when planted back on the same seed potato farm.

(4) In order to be eligible for certification in Washington state, seed lots from other states or countries must be eligible for recertification in the state or country of origin and must meet the requirements of this chapter.

(5) A seed lot blended from two or more different sources of seed is not eligible for recertification.

(6) A seed lot infected with powdery scab is not eligible for recertification.

(7) Generation 5 (G5) seed lots are not eligible for recertification.

(8) The director may grant written permission to allow seed potato lots that fail to meet the eligibility requirements to be planted for recertification. Such written permission shall specify the conditions under which planting is allowed. Prior to granting permission, the director shall consult with the Washington state seed potato commission.

AMENDATORY SECTION (Amending WSR 13-12-014, filed 5/24/13, effective 6/24/13)

WAC 16-324-398 Field inspection disease tolerance. (1) Compliance with a 0.0% tolerance is not intended, nor should it be construed, to mean that the lot inspected is free from the disease. It means that the disease was not detected during visual inspections of the seed lot.

(2) First and second field inspection tolerances, expressed as percentages.

Factor	Nuclear	G 1	G 2	G 3	G 4	G5
Varietal mixture	0.10	0.10	0.20	0.30	0.40	0.50
Mosaic	0.00	0.10	0.25	0.50	0.75	1.00
Leafroll	0.00	0.10	0.25	0.30	0.50	0.50
Total visible virus	0.00	0.20	0.50	0.80	1.25	1.50
Phytoplasmas (including *Candidatus liberibacter*)	0.00	0.00	0.10	0.20	0.50	1.00
Black leg	0.00	0.10	0.50	1.00	2.00	*
Ring rot	0.00	0.00	0.00	0.00	0.00	0.00
Nematode	0.00	0.00	0.00	0.00	0.00	0.00
Spindle tuber viroid and other quarantined pests	0.00	0.00	0.00	0.00	0.00	0.00

*Tolerance for black leg does not apply to G5.

AMENDATORY SECTION (Amending WSR 13-12-014, filed 5/24/13, effective 6/24/13)

WAC 16-324-409 Post-harvest test requirements. (1) Post-harvest testing is required for the following lots:

(a) All Generation 1 lots except lots that are less than 0.25 acre and planted back on the same seed potato farm;

(b) Seed lots sold for recertification; and

(c) Lots for which a post-harvest test is required by WAC 16-324-399.

(2) Testing of seed lots submitted for post-harvest testing in subsection (1)(a) and (b) of this section ((~~must also be~~)) by ELISA ((~~tested~~)) for PVY is optional. Seed lots officially sampled by the department for PVY testing will be subject to disease tolerance listed under WAC 16-324-420.

(3) A minimum of four hundred tubers must be submitted for each seed lot entered for post-harvest testing. Seed lots less than 0.25 acre in size must submit a minimum of four tubers per total hundred weight with a minimum of fifty tubers.

(4) The applicant is responsible for the cost of post-harvest testing.

(5) Seed lots in the post-harvest test which fail to comply with the disease tolerance requirements set forth in WAC 16-324-420 are not eligible for recertification.

(a) The applicant must notify in writing all receivers of any seed lot that failed to comply with post-harvest tolerances set forth in WAC 16-324-420.

(b) Acceptance of a seed lot that fails to comply with the tolerances set forth in WAC 16-324-420 must be based on a written buyer/seller agreement. The grower must provide the department with a copy of the written agreement within thirty days of receiving the post-harvest results.

WSR 14-21-180
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed October 22, 2014, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-177.

Title of Rule and Other Identifying Information: WAC 182-502-0230 Provider payment reviews and dispute rights.

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://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on November 25, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than November 26, 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, fax (360) 586-9727, by 5:00 p.m. on November 25, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by November 17, 2014, TTY (800) 848-5429, or (360) 725-1307, or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revising and clarifying provider overpayment dispute policy.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Evelyn Cantrell, P.O. Box 45503, Olympia, WA 98504-5504, (360) 725-9970.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

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

October 22, 2014
Kevin M. Sullivan
Rules Coordinator

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

WAC 182-502-0230 Provider ((~~payment reviews and dispute rights~~)) overpayment disputes—General. (((~~(1) As authorized by chapters 43.20B and 74.09 RCW, the department monitors and reviews all providers who furnish health care services to eligible clients. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. The department may review all documentation and/or data related to payments made to providers for health care services for eligible clients and determine whether the providers are complying with the rules and regulations of the program(s). Examples of provider reviews are:~~

~~(a) A review of all records and/or payments for medical assistance clients;~~

~~(b) A random sampling of billing and/or records for medical assistance clients; and/or~~

~~(c) A review focused on selected records for medical assistance clients.~~)) (1) This section applies to provider overpayment disputes with providers who furnish health care services to Washington apple health clients, except those overpayment disputes to which chapter 182-502A WAC applies. For the purposes of this section:

(a) "Agency" means the health care authority and its designees.

(b) "Provider" has the same meaning as vendor in RCW 41.05A.010(5).

(2) ((~~The department may~~)) If the medicaid agency determines that a ((~~provider's billing does not comply with program rules and regulations. As a result of that determination~~)) provider was overpaid, the ((~~department~~)) agency may take any of the following actions((~~, or others as appropriate~~)):

(a) ((~~Conduct prepay reviews of all claims the provider submits to the department~~)) Review claims, encounters, or payments;

(b) Refer the provider to the ((~~department's auditors (see chapter 388-502A WAC)~~)) agency's office of program integrity;

(c) Refer the provider to the Washington state medicaid fraud control unit;

(d) Refer the provider to the appropriate state health ((~~professions quality assurance commission~~)) care professional discipline authority;

(e) Terminate the provider's participation in ((~~medical assistance programs (see WAC 388-502-0030)~~)) Washington apple health;

(f) Assess a civil penalty against the provider, per RCW 74.09.210; ((~~and~~))

(g) In the event of a prepay review, suspend some or all payments;

(h) Adjust or void an improper claim, encounter, or payment;

(i) Recover any moneys that the provider received as a result of overpayments as authorized under chapter ((~~43.20B~~)) 41.05A RCW; and

(j) Any other action authorized by Title 182 WAC.

(3) A provider ((~~who disagrees with a department action regarding overpayment recovery~~)) may ((~~request~~)) contest an overpayment by requesting a hearing ((~~to dispute the action(s) per RCW 43.20B.675~~)).

(((~~(a)~~))) (4) The hearing request ((~~for hearing~~)) must:

(a) Be in writing; ((~~and~~

~~(i) Must be received by the department within twenty-eight days of the date of the notice of action(s), by certified mail (return receipt) or other means that provides proof of delivery to:~~

~~Office of Financial Recovery~~
~~P.O. Box 9501~~
~~Olympia, WA 98507-5501; and~~

~~(ii) State the reason(s) why the provider thinks the action(s) are incorrect.~~

~~(b) The office of administrative hearings schedules and conducts the hearing under the Washington Administrative Procedure Act, chapter 34.05 RCW, and chapter 388-02 WAC. The department offers a prehearing/alternative dispute conference prior to the hearing.~~

~~(c) The office of financial recovery collects any amount the provider is ordered to repay.~~))

(b) Identify each overpayment being contested;

(c) State each reason why the provider thinks the overpayment is incorrect;

(d) Include documentation to support the provider's position; and

(e) Include a copy of the overpayment notice.

(5) The hearing request must be served on the agency at the address specified in the overpayment notice, in a manner which provides proof of receipt, no later than twenty-eight calendar days after the provider received the overpayment notice.

(6) The hearing is conducted under the Administrative Procedure Act and chapter 182-526 WAC.

WSR 14-21-184
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed October 22, 2014, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-062.

Title of Rule and Other Identifying Information: Chapter 468-16 WAC, Prequalification of contractors.

Hearing Location(s): 310 Maple Park Avenue S.E., Transportation Commission Board Room 1D2, Olympia, WA 98501, on November 26, 2014, at 1:30 p.m.

Date of Intended Adoption: November 26, 2014.

Submit Written Comments to: Jenna Fettig, 310 Maple Park Avenue S.E., P.O. Box 47360, Olympia, WA 98504-7360, e-mail fettigj@wsdot.wa.gov, fax (360) 705-7810, by November 25, 2014.

Assistance for Persons with Disabilities: Contact Jenna Fettig by November 25, 2014, (360) 705-7810.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There are numerous changes to chapter 468-16 WAC that need to be made to modernize processes and streamline department functions and workload. The biggest changes are:

- Removing equipment lists as a requirement for prequalification and annual renewal of prequalification.
- Bringing the process of special prequalification for contracts under $100,000 from the region to headquarters.
- Requiring e-mail addresses of companies seeking prequalification, renewal or individuals listed as project references.
- Adding language that details the prequalification requirements for joint ventures.
- Updating prequalification work classes.
- Changing the parent firm pledge of net worth to a parent firm guarantee of net worth.
- Discontinuing the option of a personal pledge of net worth to increase maximum bidding capacity.
- Updating the prime contractor performance report.

Reasons Supporting Proposal: This proposal will streamline department functions and workload. It will also update the prime contractor performance report to measure contractors based on compliance with new requirements adopted since the WAC was last revised.

Statutory Authority for Adoption: RCW 47.01.101, 47.28.030, 47.28.070.

Statute Being Implemented: RCW 47.01.101, 47.28.030, 47.28.070.

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

Name of Proponent: Washington state department of transportation (WSDOT), construction division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jenna Fettig, 310 Maple Park Avenue S.E., Room 2D20, Olympia, WA 98504, (360) 705-7017.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 468-16 WAC pertains to the process of prequalifying contractors to bid on WSDOT contracts. No changes were made to the WAC that would affect the cost or time for businesses to comply with the rule. The proposed rules were shared with the list of all contractors prequalified to bid on WSDOT contracts and no objections were made.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. WSDOT is not a listed agency under RCW 34.05.328 (5)(a)(i).

October 22, 2014
Kathryn W. Taylor
Assistant Secretary

AMENDATORY SECTION (Amending WSR 97-09-045, filed 4/15/97, effective 5/16/97)

WAC 468-16-030 Definitions. The definitions set forth in this section apply throughout this chapter and have the following meanings, unless the context clearly indicates otherwise.

(1) **Above standard** - Performance ranging from standard to that meeting the lower range of superior.

(2) **Active contractor** - A contractor who has participated in department activities through maintaining required prequalification and having a history of performing department work.

(3) **Affiliate** - An associate, subordinate associate, or subsidiary firm which may involve the intermingling of funds, officers, or officials of one or more firms.

(4) **Assistant secretary for field operations support** - The primary representative of the secretary of transportation responsible for the highway construction program and for the qualification of contractors employed thereon.

(5) **Below standard** - Performance bordering on standard extending to the limits of inadequate.

(6) **Bidding proposal** - A form issued by the department for the submission of a contractor's bid containing spaces for entering bid amounts, authentication, and other data.

(7) **Capacity multiplier** - ((~~The~~)) A number between 5.0 and 7.5 multiplied by a firm's net worth to calculate its ((~~initial~~)) maximum bidding capacity.

(8) **Conditional qualification** - A temporary qualification status given a contractor who has received a "below standard" or "inadequate" overall rating or for other reasons which result in restrictions to a contractor's ability to bid on department work.

(9) **Contractor** - Any person, partnership, firm, corporation or joint venture who or which, in the pursuit of an independent business, undertakes, offers to undertake, or submits a bid to perform construction work for the department.

(10) **Department** - The department of transportation.

(11) **Endorser** - The region operations engineer or immediate supervisor of the construction project engineer, or project architect or, under specified conditions, the region administrator responsible for reviewing contractor's performance reports.

(12) **Inadequate** - Performance failing completely to meet the prescribed standard or requirement.

(13) **Integrity** - The quality of being of sound moral principle, uprightness, honesty, and sincerity.

(14) **Joint venture** - Two or more persons, sole proprietorships, companies, corporations, or combinations thereof, entering into an agreement for a business venture such as a construction project.

(15) **Limited work class** - A work classification given when a contractor lacks the total experience, organization, equipment, or skills required to perform the entire range of work within a work class.

(16) **Maximum capacity rating** - The total value of uncompleted prime contract work a contractor is permitted to have under contract with the department at any time.

(17) **Performance inquiry** - A request made to a contractor's previous employers for an evaluation of the quality and manner of that contractor's performance.

(18) **Performance rating** - A numerical rating which is equal to the grand total of the evaluation elements of the prime contractor's performance report used to measure and quantify the quality of contractor performance.

(19) **Prequalification** - The process of evaluating a contractor's financial status, organizational structure, experience, ((~~equipment,~~)) integrity, and other required qualifications to determine a contractor's responsibility and suitability for performing department work. This term is used interchangeably with qualification.

(20) **Prime contractor performance report** - A report prepared to evaluate the performance of a prime contractor upon completion of, or at an interim period during a department project which is used to adjust a prime contractor's qualification status.

(21) **Project estimate** - A document prepared by the department establishing the estimated value of all items of work, the total estimated value of work within each class of work, and the estimated total value of a project.

(22) **Rater** - The designated individual, normally the project engineer, responsible for evaluation of the quality and manner of performance of a contractor in the completion of a project.

(23) **Revocation of qualification** - The act by which a contractor's qualification is terminated.

(24) **Secretary** - The secretary of transportation who may delegate his or her functions under this chapter to the assistant secretary for field operations support or such other individual as deemed appropriate.

(25) **Standard** - The expected, acceptable quality of performance, considered to meet the demand, need or requirement.

(26) **Standard questionnaire** - The application form completed by a contractor to present information relating to the applicant's financial status, experience, organization, and equipment for the purpose of becoming qualified to perform department work.

(27) **Superior** - Preeminent performance consistently at an extremely high level.

(28) **Suspension of qualification** - The termination of a contractor's qualification for a specified period of time.

(29) **Unsatisfactory** - Below standard or inadequate performance, failing to meet requirements.

(30) **Work class** - A specific type of work within the various classifications of work, e.g., grading, draining, fencing, etc.

(31) **Work class rating** - The maximum value within a class of work that is used to determine a firm's eligibility to receive a bid proposal document for a single project.

AMENDATORY SECTION (Amending WSR 00-14-055, filed 7/3/00, effective 8/3/00)

WAC 468-16-080 Qualification procedures for projects under ((~~eighty thousand dollars and effective July 1, 2005,~~)) one hundred thousand dollars. (1) Contractors may be qualified ((~~by region administrators~~)) for projects valued under ((~~eighty thousand dollars and effective July 1, 2005,~~)) one hundred thousand dollars through submission of a project specific prequalification questionnaire. Submission of a limited prequalification questionnaire (DOT form 272-063) to the ((~~region administrator or designee~~)) contract advertisement and award office or designee is required, except when the contractor is currently prequalified with the department of transportation under the provisions of chapter 468-16 WAC.

(2) Procedures for letting ((~~region level projects~~)) contracts valued under ((~~eighty thousand dollars and effective July 1, 2005,~~)) one hundred thousand dollars are published in ((~~Department Directives~~)) the *Contract Advertisement and Award Manual*.

AMENDATORY SECTION (Amending WSR 97-09-045, filed 4/15/97, effective 5/16/97)

WAC 468-16-090 Standard questionnaire. The standard questionnaire and financial statement shall be prepared and transmitted to the secretary, Attn: ((~~Contractor prequalification office~~)) Contract advertisement and award office or designee. The questionnaire shall include the following information:

(1) The contractor's name, address, phone number, facsimile number, e-mail address, and type of organization (corporation, partnership, sole proprietorship, etc.).

(2) A list of the classes of work for which the contractor seeks qualification.

(3) A statement of the ownership of the firm and, if a corporation, the name of the parent corporation, if any, and the names of any affiliated or subsidiary companies.

(4) A certificate of authority from the office of the secretary of state to do business in Washington state if the applicant is an out-of-state corporation.

(5) A list of officials within the applicant firm who are also affiliated with other firms involved in construction work as a contractor, subcontractor, supplier, or consultant; including the name of the firm and their relationship with the affiliate firm.

(6) A complete list of the highest valued contracts or subcontracts performed in whole or in part within the immediate three years preceding application. The contract amount, contract number, date of completion, class of work; and the name, mailing address, e-mail address, and phone number of the project owner or agency representative must be provided

for those projects listed. Only that work completed by the contractor's own organization under its own supervision will be considered for prequalification purposes. A minimum of five completed projects must be listed.

(7) Personnel requirements.

(a) A listing of the principal officers and key employees indicating their years of experience in the classes of work for which prequalification is sought. For qualification in a class of work based on newly acquired personnel rather than the firm's past contract experience, the newly acquired personnel must be available for future employment for the full year for which qualification is sought unless replacement personnel have been approved. The loss of such personnel during the year of qualification, will result in revocation of qualification for the class of work granted pursuant to their acquisition. The department may require resumes of such personnel as deemed proper for making its determination. The firm's performance on department contracts must be currently rated standard or better to be used for qualification purposes.

(b) A firm must have, within its own organization, qualified permanent, full time personnel having the skills and experience including, if applicable, technical or specialty licenses, for each work class for which prequalification is sought. Those firms seeking qualification for electrical work (classes 9 and 16) must provide photocopies of current Washington state electrical licenses. The skills and experience must be substantiated by education and practical experience on completed construction projects.

(c) "Its own organization" shall be construed to include only the contractor's permanent, full time employed office and site supervisory personnel as shown on the most recently submitted or amended prequalification questionnaire. Workers of the organization shall be employed and paid directly by the prime contractor. The term "its own organization," shall also include the equipment owned or rented by the contractor with or without equipment operators. Such term does not include employees or equipment of another contractor, subcontractor, assignee, or agent of the applicant contractor although they are placed on the applicant contractor's payroll.

(8) ((~~A list of all major items of equipment used to perform those classes of work for which prequalification is sought. The description, quantity, condition, present location, and age of such equipment must be shown. The schedule must show whether the equipment is owned, leased, or rented.~~

~~(9)~~)) A financial statement.

For a firm showing a net worth in excess of one hundred thousand dollars, the applicant must provide, with the questionnaire, a copy of its financial statement as audited or reviewed for its last fiscal year, prepared in accordance with the standards of the American Institute of Certified Public Accountants. The statement must be prepared by an independent certified public accountant registered and licensed under the laws of any state. Balance sheets, income statements, a statement of retained earnings, supporting schedules and notes, and the opinion of the independent auditor must accompany the financial statement.

(((~~10~~))) (9) A wholly owned subsidiary firm may file the latest consolidated financial statement of its parent corporation in lieu of a financial statement prepared solely for the subsidiary. When a consolidated financial statement is submitted, the requirements of subsection (((~~9~~))) (8) of this section and WAC 468-16-140 (2)(b) must be fulfilled.

(((~~11~~))) (10) The applicant shall list the following occurrences within the previous three years:

(a) Instances of having been denied qualification, or a license, or instances of having been deemed other than responsible by any public agency.

(b) Convictions for felonies listed in WAC 468-16-050.

(c) Failure to complete a contract.

(((~~12~~))) (11) The standard questionnaire shall be processed as follows:

(a) The application for qualification shall be prepared on a standard questionnaire provided by the department and sworn to before a notary public or other person authorized to take oaths.

(b) A standard questionnaire will be reviewed and a written notice provided to the applicant, within thirty days of its receipt, stating whether the applicant has been prequalified or qualification has been denied. The applicant will be advised of lack of receipt of data corroborating project completion and errors or omissions in the questionnaire and a request made for additional information necessary to complete evaluation of the applicant. If the information is not provided within twenty calendar days of the request, the application will be processed, if possible, with the information available or it will be returned to the applicant without further action.

(c) When qualification is denied, the applicant shall be advised in writing by certified mail (return receipt requested) of the reasons for the denial and of the right to a hearing upon written request.

(d) Applicants not satisfied with the qualification granted may request in writing, a review of their questionnaire and qualification ratings. The request must be filed within thirty calendar days of the date of receipt of the notice of qualification and must specifically state the basis for the request.

(e) The secretary or designee shall advise the applicant of his or her decision on the reconsideration within thirty calendar days of receipt of the request.

(((~~13~~))) (12) Criteria for initial qualification, renewal, and submission of supplemental data:

(a) Qualification may be established in any calendar quarter and must be renewed annually. Information submitted in the questionnaire will be used as a basis for the contractor's initial prequalification, work class ratings, and maximum capacity ratings. Qualification will be valid for the remainder of the applicant's fiscal year plus ((~~one~~)) two calendar quarters as established by the date of the year-end financial statement. Prequalification will be renewed annually thereafter or at other times as designated by the department.

(b) A standard questionnaire from a contractor, not previously qualified under this chapter, must have been received no less than fifteen calendar days and prequalification must be granted by the department ((~~no less than fifteen calendar days~~)) prior to the scheduled bid opening to receive consideration for issuance of a bidding proposal for that bid opening unless the contract is under one hundred thousand dollars, in

which case the department may waive the fifteen-day requirement.

(c) The department may, during the period for which the contractor has been prequalified, require the submission of a new standard questionnaire. If the questionnaire is not provided within thirty calendar days of the date of request, the notice of qualification held by the contractor will be declared invalid and the contractor will not be permitted to bid with the department until the contractor is again prequalified.

(d) A supplemental questionnaire shall be submitted when a significant change in the structure of the firm occurs, e.g., incorporation, officers, ownership, etc., or when required by the department.

(e) If prequalification has lapsed for more than six months, the applicant will again be required to submit a fully executed standard questionnaire and financial statement.

(f) The applicant shall authorize the department to request and receive such additional information from any sources deemed necessary for the completion of the qualification process.

(g) Inquiries will be made and investigations, if necessary, will be conducted to verify the applicant's statements and to determine eligibility for qualification.

(h) The department may, upon request, require a list of all major items of equipment used to perform those classes of work for which prequalification is sought. The description, quantity, condition, present location, and age of such equipment must be shown. The schedule must show whether the equipment is owned, leased, or rented.

(i) The department may require a personal interview with a principal or principals of the contracting firm when considering its qualification.

((~~(i)~~)) (j) Qualified contractors in good standing shall be notified of impending expiration of their qualification and will be provided the necessary questionnaire forms for renewal at least forty-five days before the expiration date.

((~~(14)~~)) (13) Financial information supplied by, or on behalf of, a contractor for the purpose of qualification under RCW 47.28.070 shall not be made available for public inspection and copying, pursuant to RCW ((~~42.17.310 (1)(m)~~)) 42.56.270. The foregoing restriction shall not prohibit the department's providing such information in evidence or in pretrial discovery in any court action or administrative hearing involving the department and a contractor. Insofar as permitted by public disclosure statutes, qualification ratings shall be treated as confidential information.

((~~(15)~~)) (14) Qualified contractors will be provided with notices which list projects currently being advertised.

AMENDATORY SECTION (Amending WSR 94-05-004, filed 2/2/94, effective 3/5/94)

WAC 468-16-110 Joint ventures. (1) Joint ventures are prequalified under two categories as follows:

(a) Individual project joint venture - An association of two or more firms formed for the specific purpose of submitting a bid on a specific project.

(i) All firms must be individually prequalified with the contracting agency. The joint venture must have the experience to perform a percentage of the total work (by work class) as specified in the current issue of the *Standard Specifications*. When both firms have experience in the same work class, the higher of the two amounts will be used to determine if the joint venture meets the experience requirements. The maximum bidding capacities of the firms shall be added together, increasing the size of the contract that the joint venture may bid on.

(ii) The firms must file an "individual project statement of joint venture" and a joint venture agreement in the formats prescribed.

(iii) Individual project joint ventures must maintain a standard or higher performance. Should the individual project joint venture receive a less than standard rating, the provisions of WAC 468-16-100 shall apply.

(b) Continuing joint venture - An association of two or more firms formed for the purpose of submitting bids for projects to be advertised over a period of time.

(i) All firms must be individually prequalified with the contracting agency. The joint venture must have the experience to perform a percentage of the total work (by work class) as specified in the current issue of the *Standard Specifications*. When both firms have experience in the same work class, the higher of the two amounts will be used to determine if the joint venture meets the experience requirements. The maximum bidding capacities of the firms shall be added together, increasing the size of the contract that the joint venture may bid on.

(ii) The firms must file a "statement of continuing joint venture."

(iii) Continuing joint ventures must maintain a standard or higher performance rating in order to remain qualified.

(iv) A rating of less than standard will cause the joint venture to be placed in conditional qualification status.

(2) A standard questionnaire and financial statement for each member, if not on file, and a standard questionnaire and financial statement designating the assets and liabilities of the venture shall be submitted for the joint venture with a copy of the joint venture agreement. The agreement shall specify the name under which the joint venture will operate and the names of those individuals authorized to sign proposals, contracts, and other documents on behalf of the joint venture. It shall contain provisions which will unequivocally bind the parties, jointly and severally, to any contract entered into thereunder.

AMENDATORY SECTION (Amending WSR 97-09-045, filed 4/15/97, effective 5/16/97)

WAC 468-16-130 Prequalification work classes. A contractor seeking prequalification under this chapter will be classified for one or more of the following listed work classes in accordance with the adequacy of the firm's equipment and plant facilities and its ((~~proven~~)) demonstrated ability to perform the work class sought.

Class 1 **Clearing, grubbing, grading and draining**

Removal of tree stumps, shrubs, modification of the ground surface by cuts and fills, excavating of earth materials, ((~~and the~~)) placement of drainage structures, and construction of structural earth walls.

Class 2 **Production and placing of crushed materials**

Production and placing crushed surfacing materials and gravel.

Class 3 **Bituminous surface treatment**

Placing of crushed materials with asphaltic application.

Class 4 **Asphalt concrete paving**

Production and placing Asphalt Concrete Plant Mix Pavement.

Class 5 **Cement concrete paving**

Production and placing cement concrete pavement.

Class 6 **Bridges and structures**

Construction of bridges((~~, walls~~)) and other major structures of timber, steel, and concrete.

Class 7 **Buildings**

Construction of buildings and related structures ((~~within the right of way~~)) and major reconstruction and remodeling of such buildings.

Class 8 **Painting**

Painting bridges, buildings, and related structures.

Class 9 **Traffic signals**

Installation of traffic signal and control systems.

Class 10 **Structural tile cleaning**

Cleaning tunnels, large buildings and structures and storage tanks.

Class 11 **Guardrail**

Construction of a rail secured to uprights and erected as a barrier between, or beside lanes of a highway.

Class 12 **Pavement marking (excluding painting)**

Thermoplastic markings, stripes, bars, symbols, etc. Traffic buttons, lane markers, guide posts.

Class 13 **Demolition**

Removal of timber, steel, and concrete structures and obstructions.

Class 14 **Drilling and blasting**

Controlled blasting of rock and obstructions by means of explosives.

Class 15 **Sewers and water mains**

Draining, pipe jacking, water systems, pumping stations, storm drainage systems, sewer rehabilitation, sewage pumping stations, pressurized lines.

Class 16 **Illumination and general electrical**

Highway illumination, navigational lighting, wiring, junction boxes, conduit installation.

Class 17 **Cement concrete curb and gutter**

Sidewalks, spillways, driveways, monument cases and covers, right of way markers, traffic curbs, and gutters.

Class 18 **Asphalt concrete curb and gutter**

Sidewalks, spillways, driveways, monument cases and covers, right of way markers, traffic curbs, and gutters.

Class 19 **Riprap and rock walls**

Mortar, rubble, and masonry walls; rock retaining walls, and placing of large broken stone on earth surfaces for protection against the action of water.

Class 20 **Concrete structures except bridges**

Cast-in-place median barrier, prestressing, post-tensioned structures, footings, prefabricated panels and walls, retaining walls, and ramps, foundations, rock bolts, and concrete slope protection.

Class 21 **Tunnels and shaft excavation**

Tunnel excavation, rock tunneling, and soft bore tunneling.

Class 22 **Piledriving**

Driving concrete, steel, and timber piles.

Class 23 **Concrete surface ((~~treatment~~)) finishes**

((~~Exposed aggregate, fractured fin and rope textured finishes;~~)) Architectural concrete surface finishes (fractured fin, random board, exposed aggregate, etc.). Waterproofing concrete surfaces (clear or pigmented sealer).

Class 24 **Fencing**

Wire and metal fencing, glare screens.

Class 25 **Bridge deck repair**

Bridge expansion joint repair and modification, bridge deck resurfacing and repair, deck seal.

Class 26 **((~~Deck seal~~)) Not used**

((~~Waterproof membrane.~~))

Class 27 **Signing**

Sign structures and sign((~~s~~)) foundations.

Class 28 **((~~Not used~~)) Drilled large diameter slurry shafts**

Drilled shafts 4' diameter or larger and greater than 15' deep when excavation is performed utilizing the wet method and concrete is placed by tremie methods under slurry.

Class 29 **Slurry diaphragm and cut-off walls**

Slurry excavation and the construction of structural concrete walls and slurry cut-off walls.

Class 30 **Surveying**

Highway construction surveying.

Class 31 **Water distribution and irrigation**

Irrigation systems and heavy duty water distribution.

Class 32 **Landscaping**

Landscape irrigation, planting, sodding, seeding, fertilizing, mulching, herbicide application, insecticide application, weed control, mowing, liming, soil binder, topsoil.

Class 33 **Engineering**

Work other than surveying, including engineering calculations, drawing and other related work for highway construction.

Class 34 **Erosion control**

Seeding, fertilizing, mulching, slope protection, topsoil application, hydro-seeding, soil stabilization, soil sampling.

Class 35 **Precast median barrier**

A concrete barrier that is cast and cured in other than its final position used to divide the median of two adjacent highways or temporarily placed to divert traffic in construction zones.

Class 36 **((~~Permanent tie back anchor~~)) Earth retention and anchoring**

Installation of permanent ((~~rock and~~)) soil ((~~anchors~~)) nails, soldier piles ((~~and~~)), timber lagging and micropiles. Soldier pile tie-back anchor wall construction.

Class 37 **Impact attenuators**

Installation of approved protective systems filled with sand, water, foam, or other substances which prevent errant vehicles from impacting roadside hazards.

Class 38 **Paint striping**

Painted bars, letters, symbols, and striping.

Class 39 **((~~Wire mesh~~)) Slope protection**

The installation of a zinc coated steel wire mesh anchored by wire rope and reinforced concrete posts or anchor rods. Used for dampening the effects of rolling rocks onto the highway. Slope scaling, horizontal drains, rock dowels, and rock bolts for slope stabilization.

Class 40 **Gabion and gabion construction**

Construction of walls made with containers of galvanized steel hexagonal wire mesh and filled with stone.

Class 41 **((~~Not used~~)) Intelligent transportation systems (ITS)**

Traffic sensors systems, highway advisory radios, environmental sensing stations, variable message signs, nonfiber optic based closed circuit television, and video systems.

Class 42 **Electronics((—)) - Fiber optic based communications systems**

Design and installation of fiber optic based communication systems.

Class 43 **Mechanical**

Plumbing work and the installation of heating or air conditioning units.

Class 44 **Asbestos abatement**

Asbestos abatement (L & I certified workers).

Class 45 **Hazardous waste removal**

The containment, cleanup, and disposal of toxic materials. Companies seeking this classification shall have full-time personnel with current hazardous waste training (certifications).

Class 46 **Concrete restoration**

Pavement subseal, cement concrete repair, epoxy coatings, epoxy repair, masonry repair, masonry cleaning, special coatings, epoxy injection, gunite, shotcrete grouting, pavement jacking, gunite repair, and pressure grouting.

Class 47 **Concrete sawing, coring, and grooving**

Concrete sawing, concrete planing ((~~and~~)), grinding, grooving, bump grinding, joint repair, concrete coring((~~,~~)) and rumble strips.

Class 48 **Dredging**

Excavating underwater materials.

Class 49 **Marine work**

Underwater surveillance, testing, repair, subaquatic construction, anchors, and cable replacement, floating concrete pontoon repairs and modifications, disassembly and assembly of floating concrete pontoons.

Class 50 **Ground modification**

Pressure grouting, blast densification, stone column, jet grouting, compaction, dynamic compaction, soil mixing, gravel drain.

Class 51 **Well drilling**

Drilling wells, installing pipe casing and pumping stations.

Class 52 **Sewage disposal**

Hauling and disposing liquid and solid wastes.

Class 53 **Traffic control**

Providing piloted traffic control, traffic control labor, and maintenance and protection of traffic.

Class 54 **Railroad construction**

Construction of railroad subgrade, placing of ballast, ties, and track and other items related to railroad work.

Class 55 **Steel fabrication**

Welding of steel members, heat straightening steel.

Class 56 **Street cleaning**

Street sweeping with self-propelled sweeping equipment.

Class 57 **Materials transporting**

Truck hauling.

Class 58 **Sand blasting and steam cleaning**

Steam cleaning, sand blasting, shot blasting, and water blasting.

AMENDATORY SECTION (Amending WSR 97-09-045, filed 4/15/97, effective 5/16/97)

WAC 468-16-140 Maximum capacity rating. (1) The maximum capacity rating shall be determined by multiplying the contractor's reported net worth by a factor of 5.0. The factor may be increased at a rate of 0.5 annually, provided the contractor has maintained a satisfactory performance record with the department and has completed a contract of fifty thousand dollars or more within the preceding prequalification year. The maximum factor shall be 7.5. The department may at any time decrease the rating factor if the contractor's performance becomes less than standard, however no decrease in the bidding capacity will become effective until action to appeal, as specified in these rules, has been completed.

(2) For the purpose of prequalification and establishing the maximum capacity rating, the following additional resources may be added to net worth if supported with documentation as specified:

(a) An operating line of credit - Documentation from an acceptable financial institution stating the amount of credit authorized, its expiration date, and the amount currently available. The document must be authenticated by an official authorized to execute lines of credit on behalf of the institution. Should the operating line of credit be revoked, it shall be deducted before computing a new annual maximum capacity rating.

(b) A parent firm ((~~pledge~~)) guarantee of net worth - A sworn statement from the parent firm that guarantees the performance of the subsidiary for any contracts awarded it. The document shall include a parent firm ((~~pledge~~)) guarantee in an amount such that when calculated in subsection (1) of this section will not be less than the value of uncompleted contracts of the subsidiary. An audited financial statement, as prescribed in WAC 468-16-090(9), may be requested from the parent firm when deemed appropriate.

((~~(c) A personal pledge of net worth - A sworn statement pledging a specific amount of personal assets. The statement must be accompanied by acceptable documents that will verify the ownership and value of the assets.~~))

(3) Resources listed above will not be accepted in lieu of a minimum net worth of fifty thousand dollars.

(4) For the purpose of prequalification and establishing the maximum capacity rating, a bidding company which has established a leveraged ESOP (Employee Stock Ownership Plan) may use, in place of its net worth, the lesser of:

(a) The company's net worth, as adjusted by eliminating any contra-equity or unearned compensation entry in the net worth section of the balance sheet which is directly related to the ESOP loan; or

(b) The company value as established by the company's most recent valuation for ESOP purposes provided the valuation was performed within the last twelve months which meets federal guidelines for ESOP-related valuations. The department may require submission of a copy of this valuation report for documentation purposes.

(5) When the value of a firm's uncompleted work for the department exceeds its maximum capacity rating, a bidding proposal shall be denied that firm.

AMENDATORY SECTION (Amending WSR 00-14-055, filed 7/3/00, effective 8/3/00)

WAC 468-16-150 Prime contractor performance reports. (1) Performance reports described in this section, substantially in the format as that appearing at WAC 468-16-210, will be completed for prime contractors only for projects valued at one hundred thousand dollars or more. Each prime contractor's performance report will be classified as to the primary work class being rated. This shall be stated in Section I of the report by listing the major classes of work performed by the contractor e.g., clearing, grading, surfacing, etc.

(2) Performance will be rated under the following headings: Administration, management, and supervision; quality

of work; progress of work; and ((~~equipment~~)) compliance with laws and contract requirements.

(3) The following adjectival ratings are established for performance reports:

(a) Superior	131-150
(b) Above standard	101-130
(c) Standard	100
(d) Below standard	70-99
(e) Inadequate	50-69

(4) The performance report shall be used in evaluating a contractor's prequalification status.

(5) The report shall contain a narrative section which verbally provides the details substantiating the numerical rating. The narrative section shall be based upon documentation prepared during the life of the project, such as the project engineer's diary, the inspector's daily report and other pertinent documents. This documentation shall constitute the major portion of the administrative record to be used for any hearings or litigation that may arise from the rating process.

(6) The performance report will be prepared and discussion held with the contractor by the project engineer. The report will include a numerical rating substantiated by a narrative report which describes the contractor's typical performance. The narrative will reference such documents as will substantiate the given numerical rating.

(7) The report will be endorsed by the region operations engineer or designated assistant who will provide a copy to the contractor.

(8) The contractor may appeal the rating to the region administrator in writing within twenty calendar days of the date the report is received by the contractor. If the report is not delivered to the contractor in person, it shall be forwarded by certified mail with a return receipt requested. The appeal must set forth the specific basis upon which it has been made.

(9) The region administrator or designated assistant will review all contractor performance reports after they have been endorsed and may modify the numerical or narrative rating if such is deemed appropriate. The contractor will be advised of any changes made. The region administrator will be required to make comments thereon only when the contractor's overall performance rating has been rated inadequate, below standard, or superior.

(10) Performance reports, when completed at region level, will be submitted to the secretary, Attn: Manager, contractor prequalification office, not later than forty-five calendar days following final completion of the project.

(11) The region administrator or designated assistant shall review the appeal and provide a written response to the contractor by certified mail (return receipt requested) within twenty calendar days of its receipt. A copy of the appeal and the response thereto will be forwarded to the secretary, Attn: ((~~Contractor prequalification~~)) Contract advertisements and award office.

(12) The contractor may further appeal to the secretary in writing setting forth the specific basis for the appeal. The contractor's appeal shall be made within ten calendar days of the date of receipt of the region administrator's response. When making an appeal, the contractor may also present information in person. The secretary will consider the appeal and respond to it by certified mail within sixty calendar days of its receipt. This determination shall be the final administrative act of the department.

(13) All prime contractor performance reports shall be reviewed by the office of the secretary for completeness, objectivity, and substantiation of numerical ratings. The secretary may modify the report as deemed appropriate as a result of the review. The rated contractor and region administrator shall be given a copy of the modified report. The contractor may appeal the modified report in the manner and within the time allotted in subsection (12) of this section to which the secretary shall respond as cited therein.

(14) A prime contractor performance report shall be considered a preliminary paper until all reviews and appeals have been accomplished and it shall have been stamped and initialed as having been "filed in the office of the secretary."

(15) DOT Form 421-010 is authorized.

AMENDATORY SECTION (Amending WSR 97-09-045, filed 4/15/97, effective 5/16/97)

WAC 468-16-160 Interim reports. (1) Interim performance reports will be completed for contracts of long duration, particularly those in excess of one year and submitted to the ((~~contractor prequalification~~)) contract advertisement and award office. They will be completed annually on the anniversary of the start date of the contract. An interim report will also be completed when a contractor's total, overall work has become less than standard and the firm has been advised in writing of such performance. An interim report may never cover a period of more than one year. The report will be used by the secretary as a basis for determining whether a contractor will be placed in conditional status.

(2) In the case of a conditionally qualified firm, an interim report shall be submitted at sixty calendar day intervals for the project being undertaken by that firm subsequent to its being placed in conditional status. When a contractor's overall performance has not been brought up to standard after two consecutive interim reports have been prepared, no further interim reports shall be made except at the written request of the contractor. The date of the report will be the date of the contractor's request.

(3) The project engineer shall submit an interim report when it becomes evident that he or she will no longer be involved in the project, providing that project has been in progress for twenty-five percent of the working days assigned the project or ninety working days whichever is less.

(4) Interim performance reports will supplement and will be made a part of the final performance report.

(5) The procedures specified in WAC 468-16-150 (5) through (14) are also applicable to the processing of the interim performance report.

(6) DOT Form 421-010 is authorized.

AMENDATORY SECTION (Amending WSR 97-09-045, filed 4/15/97, effective 5/16/97)

WAC 468-16-180 Suspension of qualification. (1) A suspension may be ordered for cause or for a period pending

the completion of investigation and any ensuing legal action for revocation of qualification.

(2) The secretary may, upon determination from reports, other documents, or through investigation that cause exists to suspend the qualification of a contractor, impose suspension upon a contractor.

(3) The secretary may suspend qualification for:

(a) Incompetency found detrimental to timely project completion or to the safety of the public or employees.

(b) Inadequate performance on one or more projects.

(c) Infractions of rules, regulations, specifications, and instructions which may adversely affect public health, welfare, and safety.

(d) Uncompleted work which might prevent the prompt completion of other work.

(e) A finding of noncompliance and refusal to agree to take corrective action, and/or failure to implement agreed upon corrective action to comply with equal employment opportunity ((~~or~~)), women's, minority and disadvantaged business enterprise requirements or state apprentice utilization requirements.

(f) Repeated findings of noncompliance (two or more) with equal employment opportunity ((~~or~~)), women's, minority, and disadvantaged business enterprise requirements or state apprentice utilization requirements.

(g) Debarment or suspension from participation in federal or state projects.

(h) Pending completion of debarment proceedings in federal or state projects.

(4) The ((~~maximum~~)) periods of suspension for acts or deficiencies enumerated above are as follows:

(a) For subsection (3)(a) and (e) of this section - Three months.

(b) For subsection (3)(b), (c), (d), and (f) of this section - Six months.

(c) For subsection (3)(g) of this section - For duration of debarment or suspension by the federal or other state agency.

(d) For subsection (3)(h) of this section - Until a determination is made by the federal or other state agency.

(5) The secretary may reduce the period of suspension upon the contractor's supported request for reasons including, but not limited to:

(a) Newly discovered evidence;

(b) Elimination of causes for which the suspension was imposed.

AMENDATORY SECTION (Amending WSR 93-03-020, filed 1/12/93, effective 2/12/93)

WAC 468-16-200 Hearings procedure. (1) A contracting firm which has been notified by the secretary that the department is contemplating suspending or revoking its qualification, may request in writing within twenty calendar days of the date of notification by certified mail, that a hearing be conducted. Unless the department is otherwise prohibited from contracting with the contractor, the suspension or revocation shall not become effective until the final decision of the secretary has been rendered. The hearing shall be conducted in accordance with the procedure set forth in this section.

(2) The secretary shall designate a hearing official to conduct any hearing held under this chapter. The hearing official shall furnish written notice by certified mail of a hearing to the contractor and any named affiliates at least twenty calendar days before the effective date of suspension or revocation of qualifications. The notice shall state:

(a) That suspension or revocation of qualification is being considered.

(b) The effective date of the proposed action.

(c) The facts giving cause for the proposed action.

(d) The cause or causes relied upon for proposing the action, i.e., fraud, statutory violations, etc.

(e) If suspension is proposed, the duration of the suspension.

(f) That the contractor may, within twenty calendar days of receipt of the notice, submit to the hearing official by certified mail, return receipt requested, information and argument in opposition to or in clarification of the proposed action.

(g) When the action is based on a conviction, judgment, or admission, fact-finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the suspension or revocation is based or whether the causes relied upon for proposing suspension or revocation exist.

(h) The time, place, and date of the hearing.

(i) The name and mailing address of the hearing official.

(j) That proposals shall not be issued nor contracts awarded to the contractor subsequent to the dispatch of the notice of hearing pending the final decision of the secretary.

(3) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended beyond forty-five calendar days from the date of the notice of the hearing. The hearing official shall schedule and conduct the hearing within thirty calendar days of the date of the notice, except when an extension is granted as provided in this subsection.

(4) In the course of the hearing, the hearing official shall:

(a) Regulate the course and scheduling of the hearings;

(b) Rule on offers of proof, receipt of relevant evidence, and acceptance of proof and evidence as part of the record;

(c) Take action necessary to insure an orderly hearing; and

(d) At the conclusion of the hearing, issue written findings of fact and recommended administrative action to the secretary. The hearing officer shall deliver the entire record to the secretary.

(5) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-examine all witnesses. A transcribed or taped record shall be made of the hearing unless the secretary and the contractor waive the transcript or taping requirement. The transcript or tape shall be made available, at cost, to the contractor and all named affiliates upon request.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this chapter, that the named contractor has engaged in conduct described in WAC 468-16-050 and the sole issue before the hearing official is the appropriateness of revocation of qualification or the length of

suspension of qualification to be recommended to the secretary, prior judicial or administrative decision or findings shall not be subject to collateral attack.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the contractor of his determination in writing.

Upon denial, suspension or revocation of prequalification, the respondent may appeal therefrom to the superior court of Thurston County pursuant to RCW 47.28.070. If the appeal is not made within the time prescribed in that statute, the department's action shall be conclusive.

AMENDATORY SECTION (Amending WSR 94-05-004, filed 2/2/94, effective 3/5/94)

WAC 468-16-210 Prime contractor performance report. (1) The evaluation of contractor performance shall be made on a form substantially in the format as illustrated herein.

(2) A *Prime Contractor Performance Report Manual* provides detailed instructions for preparation of the prime contractor performance report.

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PRIME CONTRACTOR PERFORMANCE REPORT

INSTRUCTIONS

The Prime Contractor Performance Report, DOT Form 421-010, consists of two parts — page1 and page 2. Page 1 consists of Sections I, II, and III. Page 2 consists of Sections IV and V. Please note that both pages are four-part forms. After completing all sections, forward the appropriate copies as indicated on the distribution list.

Section I CONTRACTOR DATA

This section denotes the type report being submitted and provides data relating to the contracting firm, its status and supervisors. Interim reports must be submitted annually on the anniversary of the project start date for all projects exceeding a duration of one year.

Section II PROJECT DATA

This section provides basic project data to assist those reviewing or otherwise using the report to place this evaluation in proper perspective with regard to project size, costs, complexity, and completion time. Under Work Class Performed by Contractor, list that work using the general headings in the description of project documents (e.g., preparation, grading, structure, asphalt concrete paving, etc.)

Section III NUMERICAL RATING

This section contains the four weighted rating areas of (A) Administration/Management and Supervision, (Q) Quality of Work, (P) Progress of Work, and (E) Equipment. Each area contains statements which are weighted as to their importance within the rating area. The rater must consider the contractor's merits in relation to each statement by checking the adjectival rating space that best describes the contractor's typical performance for each statement and by assigning an appropriate numerical score in the Rating column, e.g., Supervision and decision making — **Inadeq. 2–3.7; Below Sta. 3.8–4.4; Standard 4.5; Above Sta. 4.6–5.6; Superior 5.7–6.4.*** The rater must enter the chosen score for each statement under the heading Rating, total each area and enter the grand total of all scores. The rater must be as objective as possible. There is only one value for the rating of standard. Standard may be equated with satisfactory. Standard is defined as the performance sufficient to meet the demand, need, or requirement. Those statements warranting an inadequate, below standard, or superior rating require justification in the narrative section of the report. If more space is needed, use additional blank sheets.

*Shaded areas indicate the range of inadequate and superior ratings. Unshaded areas indicate below standard and above standard ranges, which are separated by a line representing a standard rating.

Section IV NARRATIVE RATING

This section is divided into three parts.

A General Elements — Make any general statements pertinent to reporting the contractor's work activity, e.g., innovativeness in performing the work and any other noteworthy contractor activities.

B Below Standard Elements — List any actions or activities which substantiate a numerical rating for each statement falling within the range of inadequate or below standard. Each comment must be correlated to identify the rating area and statement number. Each comment must be related to substantiating data reported during the life of the project in the Inspector's Daily Report, Project Engineer's Diary, correspondence, or other pertinent records. This data must be available as a part of the administrative record in the event of hearings or litigation.

C Superior Elements — Make supportive comments for superior ratings. Substantiation by recorded data should be available in the form of reports, letters, and other documents if not included in diaries and journals.

Comments made in response to B and C above should make reference to documented activities that describe the typical performance of the contractor.

Section V REVIEW AND AUTHENTICATION

This section provides for the recording of the review and authentication of the report by the rater, endorser, and reviewer. Its purpose is to verify that the contractor has been given a copy of the report and that the contractor is aware of his right to appeal. It also serves the purpose of verifying that the report has been reviewed for the purposes of assuring objectivity in its preparation and for the elimination of the influences of personalties. The report will be reviewed by the District Administrator. The District Administrator will enter narrative comments thereon only when the contractor's performance has been rated below standard, inadequate, or superior. The completed report is to be forwarded to the Secretary (Attn: Manager, Precontract Administration) to arrive not later than 45 calendar days after project completion.

DOT 421-010X (Instructions)
Revised 3/93

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Prime Contractor Performance Report Instructions

The Prime Contractor Performance Report, DOT Form 421-010, consists of two parts — page 1 and page 2. Page 1 consists of Sections I, II, and III. Page 2 consists of Sections IV and V.

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Section III NUMERICAL RATING

This section contains the four weighted rating areas of (A) Administration/Management and Supervision, (Q) Quality of Work, (P) Progress of Work, and (C) Compliance with Laws and Contract Requirements. Each area contains statements which are weighted as to their importance within the rating area. The rater must consult the Prime Contractor Performance Report Manual (M 41-40) for criteria used for rating contractor performance. There is only one value for the rating of standard. If more space is needed, use additional blank sheets.

* Shaded areas indicate the range of Inadequate and Superior ratings. Unshaded areas indicate Below Standard and Above Standard ranges, which are separated by a line representing a standard rating.

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C Superior Elements — Make supportive comments for superior ratings. Substantiation by recorded data should be available in the form of reports, letters, and other documents if not included in diaries and journals.

Comments made in response to B and C above should make reference to documented activities that describe the typical performance of the contractor.

Section V REVIEW AND AUTHENTICATION

This section provides for the recording of the review and authentication of the report by the rater, endorser, and reviewer. Its purpose is to verify that the contractor has been given a copy of the report and that the contractor is aware of his right to appeal. It also serves the purpose of verifying that the report has been reviewed for the purposes of assuring objectivity in its preparation and for the elimination of the influences of personalities. The report will be reviewed by the Region Administrator. The Region Administrator will enter narrative comments thereon only when the contractor's overall performance has been rated below standard, inadequate, or superior. The completed report is to be forwarded to the Secretary (Attn: Prequalification Branch) to arrive not later than 45 calendar days after project completion.

DOT Form 421-010 EF Instructions
Revised 06/2014

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Washington State Department of Transportation

Prime Contractor Performance Report

Section I Contractor Data

Report type: ☐ Interim ☐ Final ☐ Special	Contractor no. (HQ use only)
Company Name	
Address	Phone no.
Superintendent	Foreman

Section II Project Data

District	Contract no. / FA no.	County	SR
Project title			
Authorized working days	Working days charged	Work starting date	Completion date
Contract award amount		Contract completion amount	

Work class performed by contractor:

Description of work:

Section III Numerical Rating

A ADMINISTRATION / MANAGEMENT / SUPERVISION	*Inadequate	*Below Standard	Standard	Above Standard	* Superior	Rating
1 Supervision and decision making	2	3.8	4.5	5.6	6.4	
2 Coordination and communication with subcontractors and suppliers	2	2.2	3.2	4.2	4.8	
3 Submission of documents and reports	1	1.8	2.7	3.5	4.0	
4 Adequacy and timeliness of progress schedules	1	1.8	2.7	3.5	4.0	
5 Public safety and traffic control	2	2.2	3.2	4.4	4.8	
6 Compliance with laws ordinances and regulations	1	1.2	1.9	2.5	3.0	
7 Maintenance of employee safety standards	1	1.2	1.9	2.5	3.0	
8 Coordination and cooperation with department personnel on project matters	1	1.2	1.9	2.5	3.0	
9 Compliance with EEO; affirmative action requirements and MBE/DBE/WBE requirements	1	1.2	1.9	2.5	3.0	
10 Public relations with the general public, other agencies and adjacent contractors	1	1.4	2.1	2.8	3.0	
Total	13	18	26	34	39	
Q QUALITY OF WORK						
1 Adherence to plans and specifications	10	14.0	20	26	30	
2 Standards of workmanship	8	11.5	16	21	24	
3 Completion of final (punch list) work	2	2.5	4	5	6	
Total	20	28	40	52	60	
P PROGRESS OF WORK						
1 Completion of project within allotted time	9	12.5	18.0	23.5	27.0	
2 Scheduling and execution of schedule	3	4.6	6.6	8.6	9.9	
3 Delivery of materials and supplies	1	1.3	1.8	2.3	2.7	
4 Operation and use of equipment	1	1.3	1.8	2.3	2.7	
5 Use of personnel	1	1.3	1.8	2.3	2.7	
Total	15	21	30	39	45	
E EQUIPMENT						
1 Condition	1	1.5	2.0	2.5	3.0	
2 Maintenance	1	1.5	2.0	2.5	3.0	
Total	2	3	4	5	6	
Grand Total (A+Q+P+E) (Performance Rating)	50	70	100	130	150	
RANGE	(50–69)	(70–99.9)	(100)	(100.1–130)	(130.1–150)	

* Explain any inadequate, below standard, and superior ratings in narrative section.

PERFORMANCE SCORE — HQ use only

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DISTRIBUTION: White — Precontract Administration; Canary — District Administrator; Goldenrod — Project Engineer; Pink — Contractor

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Washington State Department of Transportation

Prime Contractor Performance Report

Section I Contractor Data		Section II Project Data			
Report Type ☐ Interim ☐ Final ☐ Special	Contractor No. (HQ Use Only)	Region	Contract No. / Federal-Aid No.	County	SR
Company Name		Project Title			
Address	Phone No.	Auth. Working Days	Working Days Charged	Work Starting Date	Completion Date
Superintendent / Foreman		Contract Award Amount		Contract Completion Amount	
Work Class Performed by Contractor:					
Description of Work:					

Section III Numerical Rating

	* Inadequate	* Below Std	Standard	Above Std	* Superior	Rating
A Administration / Management / Supervision						
A1. Supervision/Decision Making/Coordination with Subcontractors and suppliers	3	4	6	8	10	
A2. Submission of Documents and Reports	3	4	6	8	10	
A3. Coordination and Cooperation with Department Personnel on Project Matters	3	4	6	8	10	
A4. Relations with General Public, Other Agencies and Adjacent Contractors	2	4	5	6	7	
A5. Maintenance of Employee Safety Standards	1	1.5	2	2.5	3	
Section A Total	12	17.5	25	32.5	40	
Q Quality of Work						
Q1. Adherence to Plans and Specifications	9	12.5	15	18	21	
Q2. Standards of Workmanship	6	8	10	12.5	15	
Q3. Public Safety and Traffic Control	2	3	4	5	6	
Q4. Environmental Compliance	4	5	6	7	8	
Section Q Total	21	28.5	35	42.5	50	
P Progress of Work						
P1. Completion of project within allotted time	6	8	10	12	14	
P2. Baseline scheduling	2.5	3.5	5	7	8.5	
P3. Weekly look ahead schedule & schedule update	1.5	2.5	4	5.5	7.5	
P4. Number of days from Physical Completion Until contract completion	3	4.5	6	8	10	
Section P Total	13	18.5	25	32.5	40	
C Compliance with Laws and Contract Requirements						
C1. Compliance with EEO, On-the-Job Training and D/M/W/SBE Requirements	1.3	3.5	5	6.5	8	
C2. Compliance with Apprenticeship Requirements	1.3	3.5	5	6	7	
C3. Compliance with Laws, Ordinances and Regulations	1.4	3.5	5	5	5	
Section C Total	4	10.5	15	17.5	20	
Project Total	50	75	100	125	150	

* Explain any Inadequate, Below Standard, and Superior ratings in Narrative Section (IV)

Performance Score | HQ Use Only

NOTE: An inadequate or below standard rating in any section shall limit the section total to a standard rating.

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Page 1 of 2

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Contract No. _____

SECTION IV NARRATIVE RATING

A GENERAL ELEMENTS Enter comments which generally describe the contractor's overall performance and provide background data on the project.

B BELOW STANDARD ELEMENTS Enter comments here to substantiate below standard ratings. (See instructions)

C SUPERIOR ELEMENTS Enter comments here to substantiate superior ratings. (See instructions)

SECTION V AUTHENTICATION AND REVIEW

I certify that I have objectively prepared this report basing it upon data contained in available project records and discussed the report with the contractor.

PROJECT ENGINEER DATE

I have reviewed this report for objectivity and accuracy. I have given a copy of this report to the rated contractor and I have advised the contractor that any appeal must be made within 20 calendar days.

DATE COPY GIVEN/MAILED TO CONTRACTOR

OPERATIONS ENGINEER OR DESIGNEE DATE

I have reviewed this Contractor Performance Report and make the following comments and changes as cited herein or on attached sheets. _____

DISTRICT ADMINISTRATOR DATE

DOT 421-010X Pg 2 of 2 Revised 3/93

DISTRIBUTION: White — Precontract Admin. Canary — District Administrator Goldenrod — Project Engineer Pink — Contractor

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Contract No. _____

Section IV Narrative Rating

A General Elements Enter comments that describe the contractor's overall performance and provide background data on the project.

B Below Standard Elements Enter comments here to substantiate below standard ratings. (See Instructions)

C Superior Elements Enter comments here to substantiate superior ratings. (See Instructions)

Section V Authentication and Review

I certify that I have objectively prepared this report basing it upon data contained in available project records and discussed the report with the contractor.

Project Engineer's Name (Print) | Project Engineer's Signature | Date

I have reviewed this report for objectivity and accuracy. I have given a copy of this report to the rated contractor and I have advised the contractor that any appeal must be made within twenty (20) calendar days.

Date Copy Given / Mailed to Contractor

Operations Engineer or Designee's Name (Print) | Operations Engineer or Designee's Signature | Date

I have reviewed this Contractor Performance Report and make the following comments and changes as cited herein or on attached sheets.

Region Administrator's Name (Print) | Region Administrator's Signature | Date

DOT Form 421-010 EF Revised 01/2014 Distribution: Original - Prequalification Branch Copy - Region Administrator Copy - Project Engineer Copy - Contractor Page 2 of 2

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.